

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

% *Date of Decision: 11th January, 2010*

+ **CRL.APPEAL NO.552/2004**

UTTAM BISWASAppellant
Through: Mr.Rajesh Mahajan, Advocate

Versus

STATERespondent
Through: Ms.Richa Kapoor, A.P.P.

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. A perusal of the impugned judgment does not guides us much as to what circumstances have been used by the learned Trial Judge to convict the appellant. But, learned counsel for the State submits that from lines scattered here and there, it can safely be said that the incriminating circumstances against the appellant are that the clothes of the appellant recovered at the time of his apprehension were stained with blood; pursuant to the disclosure statement Ex.PW-2/H made by the appellant, a tong (*chimta*) Ex.P-1 and

half brick Ex.P-7 stained with blood was recovered. Further incriminating evidence, urges learned counsel for the State, is that the testimony of PW-3 establishes that the appellant and the deceased were co-workers in his factory and used to sleep in the factory itself. The deceased was brutally murdered on the verandah of the second floor of the said factory. The appellant was found in the factory and feigned an injury.

2. We may note at the outset that the *chimta* Ex.P-1 has not been linked as the weapon of offence. It has not been shown to Dr.Chanderkant PW-6, who conducted the post-mortem of the deceased. As regards the half-brick Ex.P-7, we note that the same has not been sent for serological test. The report Ex.PW-14/A of the FSL laboratory shows that various exhibits which were seized during investigation were sent for serological examination, but unexplainably, half-brick Ex.P-7 has not been sent for serological examination. Thus it is not established that the brick Ex.P-7 was stained with blood.

3. With reference to the testimony of SI Yashpal Yadav PW-2, Inspector R.S.Nehra PW-7 the investigating officer, and Ct.Neeraj PW-12, as also the testimony of Vijay Manchanda PW-3, the owner of the factory where the deceased Bali Ram Tiwari was found murdered, it is apparent that the crime was detected when Vijay Manchanda PW-3 reached the factory at

around 9:25 AM on 4.8.1999 and could not enter the factory as there was no response from inside when he pressed the button of the bell. He asked a person in the neighbourhood to see from the roof of the adjoining factory as to why there was no response. The person told him that a person was lying in a pool of blood in his factory. When Vijay Manchanda gave said information to the police, the three police officers afore-noted reached the factory and upon entering the same found Bali Ram Tiwari dead in a pool of blood on the second floor. The dagger Ex.P-2 was lying next to the dead body. As they came down the stairs, they found the appellant on the staircase between the first and the second floor. The appellant was unconscious and injured. The appellant was removed to the hospital where he was treated by one Dr.Rakesh who prepared the MLC Ex.PW-13/A which records that the appellant was having tenderness on the chest valves. The appellant was advised x-ray.

4. The post-mortem of the deceased was conducted by Dr.Chanderkant PW-6 who prepared the post-mortem report Ex.PW-6/A noting therein the following 10 injuries:-

“1. One incised wound in the upper and middle of forehead 6 cm above from bridge of nose, size 4 cm x 1 cm x bone deep, margins and angle acute.

2. One punctured wound, circular in shape, inverted contused margins, on left forehead 3 cm above from left eye brow size 0.2 cm x 0.2 cm x bone deep.

3. One incised wound on the forehead outer aspect, left side, 3 cm above from outer aspect of left eye brow, both margins and both angles acute, size 4 cm x 2 cm x 3.2 cm underneath bone (left frontal bone fractured).

4. One incised wound on left temporal region 5 cm above from left ear, both margins clean cut, both angles acute size 2 cm x 0.8 cm x 1 cm.

5. One obliquely placed incised wound on posterior aspect of left temporal region, 3 cm away from midway injury No.4, both angles acute, both margins clean cut size 5 cm x 1 cm x fractured bone deep.

6. One incised wound outer aspect of forehead right size, 6 cm above from right eye brow both margins clean cut, both angles acute size 4 cm x 1 cm x fractured right frontal wound deep.

7. One contused lacerated star shaped wound on right temporal region 3 cm x 2 cm x bone deep.

8. One punctured wound on the outer aspect of right eye brow, margins contused and inverted circular in shape size 0.4 cm x 0.4 cm x bone deep underneath frontal bone (right) fractured.

9. One linear abrasion obliquely placed on the neck left side size 16 cm x 0.4 cm.

10. One transversely placed abrasion on the lower and frontal part of neck size 11 cm x 0.2 cm."

5. Dr.Chanderkant gave opinion Ex.PW-6/B when the dagger Ex.P-2 was sent to him for opinion. As opined by him and as deposed by him when he appeared as PW-6 injuries 1, 3, 4, 5, 6, 9 and 10 could be produced by the dagger Ex.P-2.

6. It is interesting to note that *chimta* Ex.P-1 and the half-brick Ex.P-7 were not sent to Dr.Chanderkant for opinion.

7. Suffice would it be to state that injury No.2 and 8 are punctured wounds, circular in shape having inverted contused margins, meaning thereby, a distinct weapon of offence other than a knife or dagger has been used to inflict the said two injuries.

8. When examined under Section 313 Cr.P.C. the appellant stated in response to the last question that he and the deceased were residing together. The deceased had a quarrel with somebody on money transactions and in the unfortunate night 3 people came. While he was coming down they enquired about the deceased and on his reply they went upstairs. One of them stopped him in the staircase and gave him a beating as a result whereof he became unconscious and fell down. That he did not know what happened to the deceased.

9. We note that SI Yashpal Yadav PW-2 has categorically stated that the appellant was lying unconscious in between the first floor and the second floor on the staircase. Even PW-3 has so stated. Inspector R.S.Nehra PW-7 has used the expression that when he saw the appellant, he was lying

as if he was unconscious. Ct.Neeraj PW-12 has also stated that the appellant was lying unconscious on the stairs.

10. We note that Ct.R.N.Jha PW-9, who had removed the appellant to the hospital, stated that since the appellant was in an unconscious condition he disclosed nothing on the way to the hospital.

11. Since the impugned judgment does not guide us much, we have, with the help of learned counsel for the appellant and the State perused the testimony of the various witnesses.

12. It is apparent from the testimony of PW-2, 3, 7, 9 and 12 that the appellant was inside the same building where the crime took place and was himself injured. All witnesses, save and except Inspector R.S.Nehra PW-7, categorically stated that when they found that appellant on the staircase he was unconscious. Inspector R.S.Nehra is the only witness who has used the expression that the appellant was lying as if he was unconscious. His testimony is suggestive as if the appellant was feigning unconsciousness.

13. We note that the MLC Ex.PW-13/A of the appellant records that when brought to the hospital the appellant was conscious and oriented.

14. Unfortunately, the doctor i.e. Dr.Rakesh who prepared the MLC could not be examined as he had left employment in the hospital concerned. We note that the MLC records tenderness in the chest of the appellant.

15. We are of the opinion that the appellant is entitled to the benefit of doubt for the reason the post-mortem report of the deceased conclusively establishes that two weapons of offence were used, suggestive of the fact that the deceased was assaulted by two or more persons. We note that the *chimta* Ex.P-1 got recovered by the appellant pursuant to his disclosure statement has not been linked as the weapon of offence. Similarly, the half blood-stained brick Ex.P-7 has not been linked as the weapon of offence and has not even been sent to the serologist for any opinion. The clothes of the appellant were found stained with blood. The serological report does not link the same with the blood group of the deceased. We note that as per the confessional-cum-disclosure statement Ex.PW-2/H the appellant gave the reason for assaulting the deceased as the deceased was his tormentor, stating that in the past the deceased used to sodomize him and attempted to sodomize him that night. The appellant was re-medically examined after his disclosure statement and the report (not exhibited but at page No.230 of

the trial court record) rules out that the appellant was ever sodomized.

16. The statement of the appellant when examined under Section 313 Cr.P.C. is probable and acceptable for the reason two weapons of offence have been used admittedly in the commission of the crime suggestive of at least two persons assaulting the deceased.

17. The appeal is allowed. Impugned judgment and order dated 24.5.2003 convicting the appellant of the offence of having murdered Bali Ram Tiwari is set aside. The appellant is acquitted of the charge framed against him.

18. The appellant is on bail. The bail bond and the surety bonds furnished by the appellant are discharged.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 11, 2010

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