

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

% *Judgment Reserved on: 27<sup>th</sup> April, 2010*  
*Judgment Pronounced on: 3<sup>rd</sup> May, 2010*

+ **CRL.APPEAL No.1015/2008**

JAMIL ..... Appellant

Through: Mr.Sumeet Verma, Advocate

versus

STATE ..... Respondent

Through: Ms.Richa Kapoor, Advocate

**CRL.APPEAL No.258/2009**

SUDHIR @ SONU ..... Appellant

Through: Ms.Anu Narula, Advocate

versus

STATE ..... Respondent

Through: Ms.Richa Kapoor, 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?
3. Whether the judgment should be reported in the Digest?

**PRADEEP NANDRAJOG, J.**

1. The case of the prosecution is that on 28.06.2003 Ct.Rohtash PW-12 and HC Subh Ram PW-28 were on patrolling duty near Ghata Masjid Service Road, Delhi. At about 7:25 AM when they were proceeding from Shantivan towards Rajghat

on their motorcycle, they saw a three-wheeler scooter bearing No.DL 1RF 4379 moving towards Shantivan from Rajghat and simultaneously heard cries of 'bachao bachao' coming from the said TSR vehicle. They started chasing the TSR and during the chase saw a person being thrown out from the TSR when it reached near Urdu Academy. Const.Rohtash PW-12 left HC Subh Ram with the injured who was thrown out and continued the chase. He managed to stop the TSR near Shantivan and as the TSR came to a halt 3 persons got down and started to flee. A PCR van happened to be nearby. The police personnel therein being Const.Anil Kumar PW-2 and HC Vijender PW-3, as deposed to by the two, helped Const.Rohtash to chase and apprehend 1 out of the 3 persons in the TSR who disclosed his name as Sudhir @ Sonu (appellant of Crl.Appeal No.258/2009).

2. The injured named Mamchand who was thrown out of the TSR in the meanwhile was taken to LNJP Hospital where he died within 15 to 20 minutes of being admitted as recorded on the MLC Ex.PW-13/A proved at the trial by Dr.Hanender Sahni PW-13 the doctor who had treated Mamchand recording on the MLC that the right wrist joint had a fracture and there were abrasions on the body.

3. A personnel in the PCR van informed PS Darya Ganj about the incident, where ASI Mool Chand PW-8 recorded DD

No.6A, Ex.PW-8/A, at 7:30 AM which was marked to SI Manmohan Kumar PW-30 who accompanied by HC Krishna PW-23 proceeded to the segment of Ring Road between Shantivan and Rajghat and met Const.Rohtash and HC Subh Ram who handed over the appellant Sudhir @ Sonu to them. SI Manmohan Kumar recorded the statement Ex.PW-12/A of Const.Rohtash in which he disclosed the facts of the incident. On learning that the injured had been removed to LNJP Hospital SI Manmohan Kumar proceeded towards the hospital where at 8:05 AM the injured was declared dead. SI Manmohan Kumar collected the MLC Ex.PW-13/A of the injured who had died and after making an endorsement Ex.PW-30/A under the statement Ex.PW-12/A of Const.Rohtash, at 8:30 AM sent the same through HC Krishna Chand PW-23 for FIR to be registered.

4. FIR was registered at the police station for the offence of murder as it was noted on the MLC of the deceased that he had been stabbed. Information pertaining to FIR being registered was given to Insp.Dharambir Joshi PW-31 who reached the hospital and seized the body of Mamchand and sent it to the mortuary with a request that the body be preserved as by then it had yet to be identified. From the hospital SI Manmohan Kumar and Insp.Dharambir Joshi

returned to the spot where appellant Sonu had been apprehended and had been left in the custody of Const.Rohtash and HC Subh Ram. As deposed to by Insp.Dharambir Joshi he interrogated appellant Sudhir @ Sonu and recorded his disclosure statement Ex.PW-23/A in which he disclosed that appellant Jamil and juvenile co-accused Sudhir @ Sanju were his accomplices. His clothes i.e. the pant Ex.P-2 and the shirt Ex.P-1 were found having blood stains thereon and hence were seized as recorded in the memo Ex.PW-23/D. As deposed to by him, Insp.Dharambir Joshi seized the TSR bearing No.DL 1RF 4379 from the spot vide seizure memo Ex.PW-23/F. Thereafter as deposed to by Insp.Dharambir he formed a raiding team to be headed by SI Manmohan Kumar PW-30 and consisting of Const.Rohtash PW-12, Const.Lekhraj PW-25 and Const.Om Prakash PW-24 to apprehend the appellant and the juvenile co-accused Sudhir @ Sanju.

5. With the information provided by appellant Sudhir @ Sonu the raiding party, as deposed to in harmony with each other by the members thereof reached House No.CPJ-63, New Seelampur, New Delhi and found appellant Jamil who was immediately apprehended and interrogated by SI Manmohan Kumar and who made a disclosure statement Ex.PW-12/B not only admitting to the crime but stating that he could get

recovered a knife, Rs.200/- cash being the money which was robbed and a slip of paper belonging to the deceased. He produced a slip of paper Ex.PW-12/1 on which two telephone numbers 23945258 and 23933778 were written with names Chatrapal Khari and Goyal Gopal as also Rs.200/- and a knife which were seized vide memos Ex.PW-12/D, Ex.PW-12/E and Ex.PW-12/F. Jamil led the raiding party to the adjoining house No.CPJ-65 New Seelampur from where accused Sudhir @ Sanju was arrested who pursuant to his disclosure statement got recovered a razor (ustra) stated to be the weapon used by him. The same was seized vide memo Ex.PW-12/M.

6. Jamil and Sudhir @ Sonu were brought before Insp.Dharamvir Joshi along with the various exhibits which were recovered and as afore-noted. As deposed to by Insp.Dharamvir Joshi with reference to the slip Ex.PW-12/1 he rang up Chatarpal at the number immediately below his name on the slip in question and through him managed to get hold of the family members of the deceased. Bhopal Singh PW-4 the brother of the deceased and Balister PW-5 the son of the deceased reached the police station and there from taken to the mortuary of Maulana Azad Medical College and Hospital where they identified the dead body as that of Mamchand. Thereafter, Insp.Dharamvir Joshi filled up the inquest papers

and on 29.6.2003 post-mortem was conducted on the dead body of Mamchand by Dr.Avneesh Gupta who prepared the post-mortem report Ex.PW-29/A, proved at the trial by Dr.Rohit PW-29 who was familiar with the writing and signatures of Dr.Avneesh Gupta. The post-mortem report Ex.PW-29/A records 11 injuries out of which 8 were incised injuries, obviously caused by a sharp-edged weapon. 3 injuries were abrasions. It was opined on the report that injury No.1 and 11 which are incised wounds were sufficient in the ordinary course of nature to cause death. It was noted that injury No.1 entered the chest cavity at the 10<sup>th</sup> rib and pierced the right lung lobe. Injury No.1 was deep over right neck cutting not only the neck muscles but even the carotid vessels and nerves. It was opined therein that the 3 abrasion injuries could be produced by blunt force or surface impact.

7. It is apparent that every investigating officer would have gathered evidence to connect the ownership and possession of the TSR DL 1RF 4379 to either all or any one of the accused. Bahadur Gupta PW-7 and Karan Singh PW-9 are the two persons who threw light on the issue and whose statements were recorded by the investigating officer under Section 161 Cr.P.C. The TSR in question, as deposed to by Bahadur Gupta PW-7 was under his ownership and he was the

registered owner thereof, a fact proved through the medium of the permit Ex.PW-9/C issued by the Transport Department for contract carriage recording therein that TSR No.DL 1RF 4379 stands registered in the name of Bahadur Gupta for plying in the National Capital Territory of Delhi, which certificate was seized by the investigating officer vide seizure memo Ex.PW-9/A. Bahadur Gupta had informed the investigating officer that he had handed over possession of the TSR to Karan Singh PW-9, who in turn, as deposed to by him had informed the investigating officer had handed over possession thereof to Jamil for plying the same for a consideration of Rs.200/- per day.

8. The knife got recovered by appellant Jamil and the shirt and the pant of Sudhir @ Sonu which were seized when he was apprehended were sent for serological examination along with the blood sample of the deceased, vide FSL report Ex.PW-31/C all three were found to be having human blood of the same group as that of the deceased i.e. group 'O'.

9. Needless to state at the trial at which appellants were the accused (trial of juvenile co-accused being referred to the Juvenile Court) the incriminating evidence which had to be established against appellant Sudhir @ Sonu was his being apprehended as aforementioned at the spot. Incriminating

evidence which had to be established against appellant Jamil was his being proved to be running away from the spot; his being in possession of the TSR No.DL 1RF 4379; the recovery of a knife at his instance on which human blood of the same group as that of the deceased was detected and that the knife in question could be the possible weapon of offence. Further, the slip Ex.PW-12/1 being recovered from him.

10. At the trial the various police officers and the public persons noted hereinabove while noting the events as they unfolded during investigation, which we have intermingled with the deposition of the witnesses for sake of brevity, deposed to prove the respective fact as noted hereinabove and relatable to the concerned witness. Having gone through the cross-examination of all the witnesses, we record that no blemish has surfaced which dents the testimony of any witness.

11. Thus, in view of the evidence led the learned Trial Judge has convicted the appellants for the offence of having murdered Mamchand as also for the offence punishable under Section 394 IPC, needless to state with the aid of Section 34 IPC.

12. Obviously, it was difficult to prove robbery for the reason only Rs.200/- could be recovered from Jamil and it

would be extremely difficult to prove that the same belonged to the deceased.

13. It was conceded by learned counsel for the appellant for Sudhir @ Sonu that she had no case to argue to disprove his being arrested at the spot as claimed by Const.Rohtash PW-12, Const.Anil Kumar PW-2 and HC Vijender PW-3. The only submission urged was that it was apparent that the intention of the accused was to only rob the deceased and not to murder him. Unfortunately for the accused, urged the counsel, the deceased cried for help which attracted the attention of Const.Rohtash and HC Subh Ram who started chasing the TSR on their motorcycle. In panic, the accused caused injuries to the deceased and since the fatal injury was directed towards the neck, at best the intention which could be attributed would be to injure the deceased and keeping in view the place where the injury was inflicted knowledge could be imputed that there was likelihood of the deceased dying and hence the offence made out would be for the offence of culpable homicide not amounting to murder and hence punishable under Section 304 Part II IPC.

14. The argument has to be rejected for the simple reason it is settled law that intention can be developed even at the spur of the moment. There are two sources wherefrom an

intention of a person can be gathered. The first is evidenced to show the mental condition of a person excluding his acts and the second is to gather the intention from the acts. The principle behind gathering intention of a person with reference to his acts is that every person is presumed to intend the consequences of his act. More often than not evidence of the first category is difficult to gather and hence Courts have attempted to gather the intention from the acts committed. Surely, a man who holds a pistol at the temple of the victim and shoots cannot claim that he was fooling around. The intention which is writ large is to shoot the victim with a firearm and damaged the brain i.e. the intention to kill is writ large.

15. If robbers find themselves in an uncomfortable situation of the cries of a victim attracting the police and an attempt is made to flee, and while so doing the neck of the victim is slit, it is apparent that the intention is not to leave behind an eye witness who could be damaging to the interest of the robbers and hence the act of silencing the victim by cutting his neck.

16. In para 6 above we have noted that of the 11 injuries caused upon the deceased, 8 were the result of a sharp edged cutting weapon. Injury No.1 had pierced the right

lung lobe. Injury No.1 was a deep cut on the neck cutting not only the neck muscles but even the carotid vessels and nerves. The Evidence Act requires it to be treated that a fact is proved when on the evidence before the trier of the fact any prudent person would believe the fact to exist or proceed on the supposition that the fact exists. Given the injuries caused upon the deceased any prudent person would conclude that the intention of the accused was to silence the victim i.e. kill him.

17. Pertaining to appellant Jamil it was stated that the person who identified him while deposing was Const.Rohtash PW12. It was urged that dock identification of an accused by a witness who had a chance encounter with an accused is suspect unless preceded by test identification proceedings in which the witness has been able to identify the accused. It was urged that Jamil was not subjected to any such test identification proceedings. Extending the argument a little further it was urged that as per Const.Rohtash he had chased the accused and hence it was apparent that he had a glimpse of the accused from their back and hence could not have noted the features of the accused from the front, further, a fleeting glance at the accused was the maximum which

Rohtash could have had had and thus his testimony of identifying Jamil did not inspire confidence.

18. On the issue of test identification proceedings, as held in the decision reported as AIR 1988 SC 345 Hari Nath Vs. State of UP, where a witness has otherwise had sufficient opportunity to see and identify an accused the test identification proceedings of said accused can be dispensed with and are not a necessary requisite.

19. Thus, one out of the three limbs of the submission aforementioned has no legal basis to stand for. Const.Rohtash was associated in the further proceedings and being a police officer he had to be associated and thus in the instant case to conduct or hold test identification proceedings was a useless formality. Now, Const.Rohtash had chased the TSR from Shantivan towards Rajghat and had successfully intercepted the TSR near Urdu Academy. This chase obviously lasted for a few minutes. It is true that during this chase the motorcycle of Const.Rohtash was behind the TSR, but Const.Rohtash could have successfully stopped the TSR only after he overtook the same and by bringing his motorcycle in front compelled the occupants of the TSR to also stop and flee. This gave sufficient opportunity to Const.Rohtash to have a good look at the features of the accused from the front. The chase took

place at 7:30 AM in the month of June by which time it is bright sun light in the city of Delhi. Thus, in the facts as they have emerged in the instant case we do not find it a case to hold that Const.Rohtash has not to be believed.

20. That there is no documentary proof of the TSR being in the ownership or possession of Jamil is neither here nor there. The reason being, this is not a civil trial where the issue in dispute is the ownership of the TSR. What was required to be proved at the trial was that Jamil had the possession of the TSR which was abandoned near Urdu Academy on Ring Road and on proof thereof unless Jamil rendered a satisfactory explanation as to how the TSR reached the spot wherefrom it was recovered other than the manner in which the prosecution claimed it did, guilt qua him as the TSR was used in the commission of the crime, was plain.

21. Bahadur Gupta PW-7 and Karan Singh PW-9 have co-jointly proved the fact that possession of the TSR was with Jamil and nothing has been brought out in the cross-examination of the said two witnesses which discredits them. Thus, the prosecution has successfully established that Jamil was in possession of the TSR when the same was used when the crime was committed.

22. It is no doubt true that the slip Ex.PW-12/1 on which telephone numbers 23945258 and 23933778 were written with names of Chatrapal Khari and Goyal Gopal has not been proved to be in the handwriting of the deceased, but the said slip of paper having concerned with the deceased and no concern with Jamil stands proved by the fact that Insp.Dharambir Joshi could contact Chatrapal Khari on the number 23945258 and this establishes that the said slip of paper was with deceased Mamchand. It assumes significance that till said slip was recovered and Chatrapal Khari contacted and only thereafter name of Mamchand surfaced, in every document preceding said event the victim has been referred to as unknown. The argument that why Jamil would retain with him a useless slip of paper is for Jamil to answer as he only knows why he did so. The fact of the matter remains that the recovery of the said slip has been duly proved and the slip could not be planted for the reason how did Insp.Dharambir Joshi know that there exists a person by the name of Chatrapal Khari having a telephone No.23945258. So strong is the subsequent fact discovered with relation to said slip that it renders its recovery most creditworthy.

23. The fact that the knife on which human blood of the same group as that of the deceased was detected has been

got recovered by Jamil is further incriminating evidence against him.

24. We find no merits in the appeals which are dismissed.

25. Since the appellants are in jail we direct that a copy of this decision in each appeal be sent to Superintendent Central Jail Tihar to be made available to the appellants.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

**MAY 03, 2010  
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