

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

% *Date of Decision : 6th May, 2010*

+ **Crl.A.No.463/2010**

SANJAY @ RAJ Appellant
Through: Mr.Anupam S.Sharma,
Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. We are extremely pained to read the impugned judgment and order dated 23.3.2010. Our pain and anguish is to the fact that various arguable points which arose for consideration and in particular the ones which had to be considered before a finding could be returned, that the credibility of PW-8 and PW-9 is of sterling quality thereby justifying the acceptance of their percipient evidence, have not been noted and hence not dealt with.

2. Similar situation was noted by the Supreme Court in the decision reported as 2008 (16) SCC 799 Gurram Chakravarthy (2) vs. State of AP. The matter was remanded to the High Court for adjudication as per law after considering the points which arose for consideration.

3. We propose to do likewise.

4. Though brevity is desired in every decision, but not at the cost of sacrificing at the altar the consideration of points which arise for consideration.

5. Without noting what the submissions were pertaining to the credibility of PW-8 and PW-9 only noting one submission that they being the relatives of the deceased was no ground not to trust them, after noting a few judgments on the point, learned Trial Judge has accepted the eye-witness account of PW-8 and PW-9.

6. The name of the deceased is Hemant. Kailash Chand PW-8 is the father of Hemant. Kamal Kishore PW-9 is the brother of Hemant. Both of them claimed to be eye-witnesses to the incident and as per them the appellant had fatally attacked Hemant with a surgical blade.

7. It is not in dispute that Hemant received injuries which proved fatal on 7.3.2004 when the festival of colours i.e.

Holi was being celebrated. Kailash Chand PW-8 claimed to have been standing on the balcony of his flat and from said place having seen his son Hemant being assaulted by the appellant. Kamal Kishore PW-9 claims that while he was returning from market he saw his brother being attacked by Sanjay.

8. The MLC Ex.PW-6/A of deceased Hemant and the unproved MLC at page 81 of the Trial Court Record pertaining to the accused show that both of them were brought to Baba Saheb Ambedkar Hospital, Rohini by Const.Umed at 2:30 PM. It is unfortunate that Const.Umed had removed not only the deceased but even the appellant, who was also injured, to the hospital.

9. Const.Umed PW-2 deposed that he was on patrolling duty and at 1:15 PM on 7.3.2004 received information of a quarrel in NDMC Colony, Sector-XI, Rohini and he reached the spot where he find a crowd of 70-80 persons. He removed an injured to the hospital in an TSR and that Sanjay i.e. the appellant reached the hospital thereafter.

10. On being cross-examined, Const.Umed admitted having reached the spot after 15-20 minutes of receiving information of the quarrel and additionally made a categoric statement that nobody from the crowd came forward to inform

him or give any information about the offence. He denied having taken appellant to the hospital but admitted that in not only the MLC of the deceased but even on the MLC of the appellant, it was recorded that it was he who had brought both to the hospital but failed to render any explanation as to how said fact got recorded on both the MLCs.

11. Now, it is apparent that an argument arises for consideration whether at all PW-8 and PW-9 could be eye-witnesses as claimed by them and this argument has to be dealt with in the context of the testimony of Const.Umed Singh. The point for consideration would be whether it is natural conduct for a father and a brother not to remove their dear one to the hospital if indeed they witnessed the incident. The point of consideration would be, how come Const.Umed found nobody volunteering help to the deceased at the spot requiring him to take the deceased to the hospital for medical treatment.

12. Further, Kailash Chand PW-8 claims to have seen the incident from the balcony of his flat. His son PW-9 claims to have seen the incident on returning from the market. The inter se claim of the father and son to have witnessed the incident, needs to be evaluated with reference to the testimony of Kailash Chand, that his son Kamal Kishore PW-9

came to the spot when the PCR van had arrived in which his son i.e. the deceased was removed to the hospital. This facet has to be evaluated at two levels. Firstly that the deceased was not removed to the hospital in the PCR van and secondly if PW-9 is correct, then whether at all PW-9 could be the witness to the incident.

13. Similarly, vice versa, with reference to the claim of Kamal Kishore PW-9 that he saw his father for the first time when his brother was being removed to the hospital in a PCR van needs to be evaluated.

14. What needs to be discussed is whether at all PW-8 and PW-9 have so contradicted each other that none has to be believed.

15. In this controversy, the testimony of Sanjay PW-15 has also to be factored in. He is the brother-in-law of Hemant and as per him he saw Hemant in a pool of blood on the street but could not see the assailant as he had seen some persons running away. Sanjay nowhere claims that his father-in-law PW-8 and his other brother-in-law PW-9 were present at the spot. Not only that his categorical admission that neither PW-8 nor PW-9 were present at the spot and they reached the spot only after he informed them, has to be considered.

16. Not only that. The admission made by Kailash Chand that his statement was recorded by the police in the night, which statement we find has formed the First Information Report, needs to be considered in the context of whether the FIR is ante timed. In this context, the admissions made by the investigating officer that it is correct that the arrest memo of the accused shows the time of arrest at 3:15 PM whereas the FIR purports to be registered at 4:05 PM needs to be discussed. How come, on the arrest memo FIR stands recorded when FIR was registered subsequently. The fact of the investigating officer not being able to explain the hiatus as afore-noted has to be dealt with.

17. With reference to the timing of the FIR it has to be considered as to what is the effect of the proof of the fact that the FIR was delivered to the Ilaqa Magistrate at around 10:00 AM on 8.3.2004 whereas the same purports to be registered at 4:05 PM on 7.3.2004.

18. The afore-noted are the core issues which need a serious reflection by the learned Trial Judge and apart therefrom there are various other link submissions.

19. We find no discussion by the learned Trial Judge.

20. The cryptic finding by the learned Trial Judge that it is settled law that minor contradictions and discrepancies is

neither here nor there, a finding returned in para 13, is regretful. Surely, issues noted herein above are serious issues and indeed to be discussed properly by the learned Trial Judge.

21. That apart, medical jurisprudence is to be discussed with reference to the cranio cerebral damage detected on the brain of the deceased and the possibility thereof being the result of the acts attributed by PW-8 and PW-9. The defence had to be factored being that the appellant was a good friend of the deceased and was in love with the sister of the deceased which was not acceptable to Kailash Chand PW-8. The defence of the appellant that he and the deceased were assaulted by goons and he made request to the investigating officer to record his statement when appellant was declared fit for statement at the hospital also needs to be decided.

22. Besides, evidence of the defence witnesses and especially DW-2 who stated that the appellant got married to the daughter of PW-8 who unfortunately died as a result of tuberculosis during trial and proved the certificate Ex.DW-2/A had also to be discussed.

23. In plain language, the learned Trial Judge has done a most shoddy job. The judicial process has been violated. The judicial process means that the judicial mind considers and reflects upon the issues which arise for consideration and

requires to be dealt with as per law are duly dealt with after the judicial mind coming to grip with the issues.

24. We express our opinion on the various issues which seriously arise for consideration lest either party is prejudiced at the remanded stage.

25. We allow the appeal and set aside the impugned judgment and order dated 23.3.2010 as also the order on sentence dated 26.3.2010.

26. The matter is remanded to the learned Trial Judge with a direction that arguments would be heard by the learned Trial Judge on 12.5.2010 on which date learned counsel for the appellant and the learned Public Prosecutor would appear. Decision would be pronounced latest by 29.5.2010.

27. We direct the learned Trial Judge to dutifully note and deal with the issues which arise for consideration, some of which have been broadly noted by us herein above. By no means said issues are exhaustive of the ones which arise for consideration. We permit the learned counsel for the appellant to place on record written submissions and require the same to be dealt with by the learned Trial Judge.

28. Mr.M.N.Dudeja, learned APP states that he would instruct the learned Public Prosecutor attached to the learned

Trial Judge today itself to be re-prepared with the matter to argue the same on 12.5.2010.

29. Copy of this decision be supplied dasti to learned counsel for the appellant as also to learned counsel for the State under signatures of the Court Master today itself.

30. Trial Court Record would be returned to the learned Trial Judge latest by tomorrow i.e. 7.5.2010.

31. One last word. Noting the fact that the appellant was on bail and had to surrender after the impugned decision was pronounced, we direct that till fresh adjudication of the matter by the learned Trial Judge, the appellant be admitted to bail on his furnishing a personal bond in sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned Trial Judge.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

MAY 06, 2010
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