

(2010) 03 DEL CK 0355
In the Delhi High Court
Case No : Criminal Appeal No. 326 of 2007

Mehmood Ali

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Arms Act, 1959 — Section 27
Identification of Prisoners Act, 1920 — Section 5
Penal Code, 1860 (IPC) — Section 34, 380, 394, 411

Citation : (2010) CriLJ 3985

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sharddha Bhargava, for the Appellant; M.N. Dudeja, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—Since none appears for the appellant, we appoint Ms. Sharddha Bhargava, who is present in Court, as the Amicus Curiae to argue the appeal. We fix the fee of learned Counsel in sum of Rs. 7,500/-, to be paid by the Delhi High Court Legal Service Committee.

2. Vide impugned judgment and order dated 19.2.2007, appellant Mehmood Ali has been convicted for the offence of murder and robbery as also for the offence punishable u/s 27 of the Arms Act.

3. Co-accused Mohd. Munir has been convicted for the illegal possession of stolen articles i.e. the offence punishable u/s 411 IPC.

4. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life and for the offence punishable u/s 394 IPC he has been sentenced to undergo RI for 3 years. For the offence punishable u/s 27 of the Arms Act he has been sentenced to undergo simple imprisonment for 15 days.

5. Co-accused Mohd. Munir has been sentenced to undergo imprisonment for the

period already undergone till the order on sentence was pronounced i.e. 20.2.2007.

6. In convicting the appellant, the learned Trial Judge has held that the prosecution has successfully established through the testimony of Sh. N.K. Sharma PW-3 that a chance print lifted from the place of the crime matched with that of the appellant. Second piece of incriminating evidence held established against the appellant is of 3 gold bangles being got recovered by the appellant after he was arrested and he made the disclosure statement which, 3 bangles have been held to be proved as those belonging to the deceased through the testimony of Surender Chugh PW-2, the son-in-law of the deceased. Lastly, a knife got recovered by the appellant, which has been opined to be the possible weapon of offence by Dr. Mukta Rani PW-13 who conducted the post-mortem of the deceased.

7. Having gone through the Trial Court record, we find that after information of the crime was received at the local police station various police officers included Insp. Amrit Kumar PW-19 reached House No. 602, Double Storey, New Rajender Nagar at around 9:00 PM on 5.2.2004 and found deceased Chander Bhan Batra lying dead in his bedroom with knife injuries. Crime team was summoned which managed to lift some chance prints. The same was circulated to all police stations and as per the prosecution it got detected that one chance print was that of the appellant who was an accused in FIR No. 443/2003, PS Lajpat Nagar for an offence u/s 380/411/34 IPC.

8. The appellant was arrested by PS Kalyan Puri in a third FIR being FIR No. 98/2004 dated 21.2.2004, and he made a disclosure statement Ex.PW-15/A on 22.2.2004 confessing his involvement in the murder of the deceased and robbery. He named Mohd. Munir and Mehraj as his accomplices. Thereafter, the investigating officer in the instant case who was given aforesaid information formally apprehended the appellant and after obtaining police custody got recovered a knife from bushes near Shanti Van as per memo Ex.PW-19/K2. The appellant was interrogated by him prior thereto on 27.2.2004 and on 29.2.2004. He said that he can get 3 gold bangles recovered from a graveyard. On 29.2.2004 he led the investigating officer to a graveyard behind Nizammudin Dargah and from the bushes got recovered 3 gold bangles which were seized vide memo Ex.PW-19/M.

9. Co-accused Mohd. Munir was apprehended on 27.2.2004. He made a confessional-cum-disclosure statement Ex.PW-19/H1. He volunteered to get recovered 2 silver glasses and led the investigating officer to a park near flyover behind Hazrat Nizammudin and got recovered two silver glasses as recorded in the memo Ex.PW-19/L.

10. With respect to the incriminating evidence of chance finger prints lifted from the place of the crime, we note that Sh. N.K. Sharma PW-3, a finger print expert, has deposed that he prepared the report Ex.PW-3/A with reference to the chance

finger prints which were sent to him for analysis with a dozier provided by the SHO of PS Rajender Nagar.

11. HC Om Prakash PW-14 has deposed that he picked up the chance prints from an iron almirah in the house. Insp. Amrit Kumar PW-19 has deposed that he obtained the dozier of criminals from different areas and received the information on 11.2.2004 that a chance print lifted from the scene of the crime matched those of an accused in FIR No. 443/2003. He also stated that he obtained the finger prints of accused Mehmood Ali.

12. The report Ex.PW-3/A shows that the learned expert has tallied the chance print marked ?Q-1? by him with the dozier sent to him pertaining to FIR No. 443/2003.

13. But the question arises, as to who established that the finger print on the dozier sent was that of the appellant?

14. Nobody has so spoken.

15. It is apparent that the learned Trial Judge has believed and has proceeded on the presumption that the finger print on the dozier pertaining to FIR No. 443/2003 was that of the appellant.

16. We note that the finger print expert has not given any opinion with respect to the so-called sample finger prints claimed to have been obtained from the appellant by Insp. Amrit Kumar PW-19.

17. That apart, as held in the decisions reported as State of Uttar Pradesh Vs. Ram Babu Misra, Sukhvinder Singh and Others Vs. State of Punjab, and State of Haryana Vs. Jagbir Singh and Another, . for being admissible in evidence, chance finger prints have to be compared with the sample finger prints after obtaining permission from the Court of competent jurisdiction and after a proper identification of the prisoner as per the requirement of Section 5 of the Identification of Prisoners Act 1920. This has not been done.

18. Thus, the incriminating evidence of the chance finger print lifted from the scene of the crime being that of the appellant is not established.

19. Pertaining to the recovery of the 3 gold bangles at the instance of the appellant and pursuant to his disclosure statement and on his pointing out, we note that as per the record of the learned Trial Judge, which contains the record of the proceedings conducted before the learned Magistrate after the appellant was apprehended an application was filed on 7.5.2004 praying that 3 gold bangles and 2 silver glasses got recovered by the appellant and co-accused Mohd. Munir be put up for test identification. Learned Magistrate directed that TIP would be conducted on 15.5.2004 on which date Surrender Chugh PW-2, the son-in-law of the deceased, gave telephonic information that he cannot come. Proceedings were deferred till 22.5.2004. The witness did not come. It was deferred for 24.5.2004.

20. Thereafter, the record is silent.

21. At the trial, neither the investigating officer nor any other police officer has deposed to any Test Identification Proceedings being conducted. No Magistrate has been examined to prove any Test Identification Proceedings recorded by him. Thus, it is apparent that the 3 gold bangles and the 2 silver glasses which were allegedly got recovered from the appellant and Mohd. Munir respectively, were not subjected to any Test Identification Proceedings.

22. Surender Chugh PW-2 the son-in-law of the deceased appeared as a witness on 30.11.2004 and for the first time identified 3 gold bangles and 2 silver glasses as that of his father-in-law. He stated that his father-in-law had given him money requiring him to get prepared 6 gold bangles and 2 silver glasses and that he had gone to a goldsmith who prepared 6 bangles of 10 gms weight each and 2 silver glasses which he gave to his father-in-law.

23. On being cross-examined, Surender Chugh stated that he had no cash memo or a receipt to prove that he got fabricated any gold bangles or purchased silver glasses and that there were no identification marks on the bangles or the silver glasses.

24. In view of the phantom like testimony of PW-2 and the fact that the gold bangles did not have any identification marks, as admitted by the witness, coupled with the witness not going before the Magistrate to participate in the Test Identification Proceedings, we feel it is most unsafe to hold that the 3 gold bangles belonged to the deceased.

25. At this stage we note that Mohd. Munir was acquitted on account of the Trial Court holding that his being a possible recipient of stolen property knowing that the two silver glasses were stolen cannot be ruled out.

26. It is apparent that the learned Trial Judge ignored the aforesaid features, pertaining to the testimony of PW-2, that he did not participate at the TIP; he had no proof of getting fabricated the gold bangles; and lastly the bangles had no distinctive mark on them.

27. Thus, we are left with the sole incriminating evidence of the knife got recovered by the appellant, proved to be the possible weapon of offence, as the only incriminating evidence left.

28. Suffice would it be to state that unlike a firearm, a knife can only be opined to be the possible weapon of offence and not the only weapon of offence.

29. As held in the decisions reported as Mani Vs. State of Tamil Nadu, Deva Vs. State of Rajasthan, Surjit Singh and another Vs. State of Punjab, , AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. v. Chhatrasinh and Ors. and Prabhu Vs. State of U.P., , recovery of such kind of ordinary articles is treated as a very weak piece of evidence.

30. The appeal is allowed. Appellant Mehmood Ali is acquitted of all charges

framed against him.

31. Since Mehmood Ali is in jail we direct that the present decision be sent to the Superintendent Central Jail Tihar who is directed release Mehmood Ali unless Mehmood Ali is required in custody in any other case.