

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

% *Judgment Reserved On: 14th January, 2010*
Judgment Delivered On: 28th January, 2010

+ **CRL.APPEAL NO.769/2003**

RAJ KUMAR @ RAJU Appellant
Through: Mr.V.Madhukar, Mr.Parutosh Anil
and Mr.Jayendra, Advocates

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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. The appellant has filed the above captioned appeal challenging the judgment and order dated 6.5.2003 passed by the Trial Judge convicting him for the offences punishable under Section 302/392 IPC. For the offence of murder the appellant has been sentenced to undergo life imprisonment and to pay a fine in sum of Rs.5,000/- and for the offence of robbery appellant has been sentenced to undergo rigorous

imprisonment for five years and to pay a fine in sum of Rs.2,000/-.

2. Briefly stated, case of the prosecution is that appellant Raj Kumar was employed as a domestic help at the house of Mrs.Pushplata Correa and Dr.J.P.Correa i.e. at house bearing Municipal No.I-10 Jangpura B, Delhi. In the evening at around 7.30 PM on 22.6.1999, appellant Raj Kumar and juvenile co-accused Sunil Kumar Ojha committed murder of Dr.J.P.Correa and Mrs.Pushplata and also committed robbery of all the silver and gold jewellery items in the house.

3. Process of criminal law was set into motion, when at around 1.05 PM on 24.6.1999 information was received at PS Hazrat Nizamuddin regarding foul smell emanating from House No.I-10 Jangpura B, Delhi. It was recorded vide DD No.8A Ex.PW-19/A. Copy of said DD was entrusted to SI Baldhar Singh PW-25, who accompanied by HC Dharam Pal PW-18 and Ct.Parshuram reached the spot. The first floor of the house was found locked from outside. In the presence of Gurucharan Singh PW-2 the owner of the house who resided on the ground floor, SI Baldhar Singh broke open the lock of the first floor, and on entering therein, found dead bodies of a man and a woman, lying in a decomposed state. SI Baldhar Singh learnt that the

dead bodies were of Dr.J.P.Correa and his wife Mrs.Pushplata Correa. He made an endorsement Ex.PW-25/A under the copy of DD No.8A and sent the same for registration of an FIR. At 3.20 PM, SI Renuka PW-21, the duty officer at PS Hazarat Nizamuddin registered the FIR Ex.PW-21/A for the offence of murder. He summoned the crime team and a photographer.

4. After registration of the FIR, the investigations were transferred to Insp.Gurucharan Dass PW-26, who also reached the spot. He found a slip Ex.P-21 lying on the top of the fridge of the house. On one side of the slip it was written '*NEPALI LADKA MARA HAI. MARTEY SAMAY 24 TAARIKH NEPAL KA MAAR KE CHALA GAVA*' and on another side it was written '*MARTE SAMAY CHITTHI LIKHA HAI*' (*We note that the said slip is not in the Trial Court Record*). Insp.Gurucharan Dass seized the said slip and a one-lined notebook containing addresses of various persons from the spot vide seizure memo Ex.PW-2/B. The said notebook contained amongst others, an address in Bihar stated to be that of appellant Raj Kumar.

5. Along with the inquest papers, Insp.Gurucharan Dass sent the dead bodies to the mortuary of All India Institute for Medical Sciences for post-mortem. On 25.6.1999, Dr.Prashant Kulshreshtha PW-8, conducted post-mortem on the dead bodies

and prepared his reports Ex.PW-8/A and Ex.PW-8/B. PW-8 noted the appearance of maggots on both the bodies indicating that the bodies had started decomposing. PW-8 noted multiple incised stab wounds in the face, neck and front of trunk regions and opined the cause of death in both cases to be haemorrhagic shock caused by multiple stab injuries which were sufficient in the ordinary course of nature to cause death. The time since death was opined to be 2 ½ to 3 days.

6. On the same day i.e. on 25.6.1999, Insp.Gurucharan Dass constituted a police team consisting of SI Yashbir Singh PW-22 and Const.Rishi Raj PW-16, to go to Bihar and visit the house of the appellant as per address noted in the notebook seized from the spot. SI Yashbir Singh and Const.Rishi Raj reached Bihar on 26.6.1999 and with the assistance of the officials of PS Raj Dhanwar, Bihar in the midnight of 26/27.6.1999 arrested appellant Raj Kumar from his house in his native village being Village Ropa Mahua. On interrogation, appellant made a disclosure statement Ex.PW-15/B, wherein he confessed his involvement in the offence of murder of Mrs.Correa and Mr.Correa and also disclosed the involvement of his nephew Sunil Kumar Ojha. He further disclosed that he had stolen silver and gold ornaments kept in the house and

produced a briefcase which was found to contain a number of gold and silver ornaments; being a gold bangle, a gold necklace, two gold chains with pendants, eight pairs of gold earrings, a gold locket, seven gold rings, a gold saree pin, a set of silver toe ring and anklet, a gold bracelet, a gold nose-pin, a silver ring, a pair of silver earrings and a blood-stained silver coin. The same were seized vide seizure memo Ex.PW-10/B. The appellant got his nephew Sunil Kumar Ojha also arrested and from his possession another bag containing silver and gold ornaments was seized vide memo Ex.PW-22/A.

7. On 27.6.1999, on learning from SI Yashbir Singh about the arrest of appellant Raj Kumar and the recovery of gold and silver ornaments from his possession as also from Sunil Kumar Ojha, accompanied by Ashish PW-3 and a key-maker Idrish PW-1, Insp.Gurucharan Dass went to the first floor of house No.I-10, Jangpura and got the almirahs in the house opened with the help of duplicate keys prepared by PW-1. One almirah was found to contain 5 empty boxes of jewellery. Immediately Insp.Gurucharan Dass got added the offence of Section 392 in the FIR.

8. SI Yashbir Singh brought appellant Raj Kumar and co-accused Sunil Kumar Ojha to Delhi and on 29.6.1999 appellant

Raj Kumar led the police party to house No.I-10, Jangpura and got recovered a handle Ex.P-2 of a knife which he stated was the handle of the knife used in the commission of the offence. The same was seized vide memo Ex.PW-2/F. Insp.Gurucharan Dass prepared a sketch Ex.PW-2/A of the handle. Appellant and co-accused also got recovered two glasses Ex.P-5 and Ex.P-6 which they stated were the glasses in which they drank water after committing the offence. Appellant Raj Kumar further got recovered one shirt which he stated was the shirt worn by him at the time of the incident, from near a Ganda Nala, Machli Market and the same was seized vide memo Ex.PW-2/H.

9. On 29.6.1999, appellant Raj Kumar and co-accused were taken for TIP before Sh.Daya Parkash PW-17, Civil Judge, but they refused to participate in the same. The jewellery recovered from their possession was also put up for TIP. As per the Test Identification Proceedings Ex.PW-17/F, Ashish PW-3 the nephew of Mrs.Correa identified all the jewellery items recovered from the possession of appellant Raj Kumar, except three items, as belonging to the deceased. Helena PW-4 a part time domestic help of the deceased couple also identified all the jewellery recovered from the appellant Raj Kumar, except the coins so recovered, as the jewellery of the deceased.

10. On 30.6.1999, appellant Raj Kumar made a disclosure that he had thrown the keys of the house on the railway line near Ashram Flyover. Appellant led the police party and got recovered the key which was seized vide memo Ex.PW-25/B.

11. From the glasses recovered at the instance of the appellant and co-accused, ASI Subhash Chand PW-24 of the Finger Print Bureau, lifted 9 finger prints as recorded in the report Ex.PW-24/A. Insp.Gurcharan Dass obtained specimen finger prints of the appellant and those of Sunil Kumar Ojha and sent the same along with the chance prints lifted from the glasses to CFSL. As per CFSL report Ex.PE some of the chance prints were identical to the finger impressions of Sunil Kumar and six chance prints being Q-5, Q-6, Q-7, Q-8A, Q-8B and Q-9 were identical with impressions of either of the fingers of appellant Raj Kumar.

12. Insp.Gurucharan Dass also obtained the specimen handwritings S-1, S-2, S-3 and S-4 of Sunil Kumar Ojha and sent the same alongwith the slip Ex.P-21 recovered from the spot to CFSL for comparison of handwritings. As per the report Ex.PD the questioned writings and the specimens S-1, S-2, S-3 and S-4 appear to have been written by the same person.

13. Appellant Raj Kumar was put to trial and the prosecution examined 26 witnesses. Since co-accused Sunil Kumar was aged only 16 years at the time of commission of the crime, he was tried by the juvenile court.

14. Since the instant trial concerns only the appellant we note only the testimonies of Gurudarshan Singh PW-2, Ashish Sarad PW-3, Helena PW-4, Madan Rai PW-15, Harvinder Singh PW-20, SI Yashbir Singh PW-22, SI Baldhar Singh PW-25 and Insp.Gurcharan Dass PW-26 being the only relevant witnesses, since the learned Trial Judge has convicted the appellant on the basis of last seen evidence emerging from the testimony of Helena PW-4 and Harvinder Singh PW-20, the evidence of recovery of jewellery emerging from the testimony of Madan Rai PW-15 and SI Yashbir Singh PW-22, the identification of the said jewellery by PW-3 and PW-4 and the note Ex.P-21 seized from the spot by PW-25 and PW-26.

15. Gurudarshan Singh PW-2 deposed that on 24.6.1999 at about 2:30 PM when he was present at his residence on the ground floor of the house bearing Municipal No.I-10, Jangpura, police had gathered outside the first floor of the said house. Police called him and in his presence broke open the lock of the door and on entering the first floor, all saw the dead bodies of

Dr.Correa and Mrs.Correa, his tenants lying in the front room. On the fridge, a slip was kept which read: '*mujhe nepali naukari ne maara hai.*' From the bedroom a single line notebook containing addresses of persons who worked with Mrs. and Mr.Correa or were their relatives was found and taken into possession vide memo Ex.PW-2/B. On 29.6.1999 at about 8:30 AM police brought two accused with them and the accused got recovered a handle of a knife, a kitchen knife, two glasses from the house. Appellant Raj Kumar got recovered a shirt from near a fish market. On being cross examined he admitted that he had filed a civil suit against the deceased for getting the house vacated, but no criminal proceedings were going on. He denied that any dispute regarding supply of water was going on between the deceased and him. He stated that he was a graduate from Punjab University.

16. Ashish Sarad PW-3 deposed that Mrs.Correa was his aunt and he often went for shopping of jewellery with her. In December 1998 he stayed with Mr.Correa and Mrs.Correa for 10-15 days and at that time appellant Raju was employed by them as a domestic help. On 24.6.1999, he learnt that Mr.Correa and Mrs.Correa had been murdered (He produced photographs of the family of Dr.Correa out of which in one

photograph appellant Raj Kumar can be seen). On 27.6.1999 the investigating officer summoned him at the house of Dr. Correa and in his presence the locks of the almirah in the house of the deceased were opened and empty jewellery boxes were found. He witnessed the recoveries of handle of knife, glasses and shirt at the instance of the appellant.

17. Helena PW-4 deposed that in the year 1998-99 she was working as a part time domestic help at House No. I-10, Jungpura, 1st Floor. She did not remember the names of those who resided there, but she called them mataji and bauji. Appellant Raju was also working as domestic help in said house and till the time he was employed, she used to work at the house only once a day. But after appellant Raju left the job, she was called twice a day to work. On a Tuesday at around 6:00 PM when she was returning from Mother Dairy after purchasing milk, appellant Raju was present in the house. She questioned Raju as to why he stole Rs.10,000/- from the house and went away, on which Raju answered that Mata Ji (Mrs. Correa) was lying. On hearing this Mata Ji (Mrs. Correa) started abusing Raju and a quarrel ensued. Sahab (Mr. Correa) also arrived in the meantime, and she left. The next day when she visited the house at around 10:00 or 11:00 AM, the house was found

locked. She thought that Mr.Correa and Mrs.Correa must have gone to the Court in regard to their dispute pertaining to the house with the landlord or to the house of some relative. She left at that time and when she returned at around 12:00 PM the next day, foul smell was coming in the staircase. Later on she learnt that Mrs.Correa and Mr.Correa had been murdered.

18. Madan Rai PW-15 deposed that he was a chowkidar at Village Gopa Mahua and that on 26.6.1999 police came from Delhi and he accompanied the police to the house of the appellant where appellant was found present and his personal search memo Ex.PW-15/A was drawn up in his presence. Appellant's disclosure statement Ex.PW-15/B was recorded in his presence and that thereafter the appellant produced an attachicase which was seized vide memo Ex.PW-10/B and from within the same jewellery as recorded in the memo Ex.PW-10/B was seized.

19. Harvinder Singh PW-20 deposed that he was a resident of Lajpat Nagar and on 22.6.1999 after attending a Congress Party Program he went to Jangpura to drop Talvinder Marwah, MLA at his residence in Jangpura. At about 10:30 PM when he was returning from the house of Talvinder Marwah in Jungpura and was going to his car, he saw the appellant along

with another boy running from the stairs of House No.I-8 or I-10 Jungpura. In his cross-examination he stated that he was an active member of the Delhi Youth Congress. He did not see the appellant carrying any articles in his hands.

20. SI Yashbir Singh PW-22 deposed that on 25.6.1999 accompanied by SI Khalid Akhtar and Const.Rishi Raj he left for Bihar and reached Bihar at 2:30 PM on 26.6.1999. They went to PS Raj Dhanwar and with the assistance of the officials of PS Raj Dhanwar and one chowkidar of village Ropa Mahua namely Madan Rai went to the house of the accused and arrested appellant Raj Kumar. He interrogated the appellant and recorded his disclosure statement, whereupon the appellant produced a briefcase containing gold and silver jewellery and coin. Appellant led them to the arrest of co-accused Sunil Kumar Jha from whose possession also a number of jewellery items were recovered

21. SI Baldhar Singh PW-25 deposed that on 24.6.1999 he was assigned the investigation of DD No.8A. On reaching the spot the house was found locked and in the presence of the owner of the house Gurudarshan Singh he broke open the lock. On entering the house he found the dead bodies of Dr.Correa and Mrs.Correa lying there and he prepared endorsement under

the copy of DD No.8A and sent the same for registration of an FIR. He summoned the crime team and the investigation thereafter was transferred to Insp.Gurucharan Dass. On being cross-examined he stated that he was not aware of any quarrel or civil case going on between the deceased and the owner of the house.

22. Insp.Gurucharan Dass PW-26 deposed that on 24.6.1999 at about 1:15 PM he received information about foul smell coming from House No.I-10 Jungpura and he went to the spot. He met SI Baldhar Singh PW-25 there and saw two dead bodies of Dr.Correa and Mrs.Correa lying in the house. He seized a slip from the top of the fridge which read '*nepali naukari ne maara hai*'. He also seized a one line copy containing various addresses from the spot. He got the dead bodies identified from the relatives of the deceased and after preparing the inquest papers sent the bodies for post-mortem. A special team was sent to Bihar to arrest the accused on the basis of the address written in the note book seized from the spot. The appellant was arrested and a number of ornaments of the deceased were recovered from him. On learning about the recovery of the ornaments, accompanied by Ashish PW-3 and a key maker Idrish PW-1 on 27.6.1999 he went to House No.I-10

Jangpura and got the locks of the almirah opened with the help of duplicate keys. The almirah was found to contain 5 empty boxes of jewellery. The accused were brought to Delhi and pursuant to their disclosures they got recovered a handle of the knife and a knife used in the offence, two glasses and a shirt worn by appellant Raj Kumar at the time of commission of the offence. Later, on 30.6.1999 appellant Raj Kumar pursuant to his disclosure got recovered a key of the house from the railway line near Ashram Flyover which recovery was entered in the memo Ex.PW-25/D. He obtained fingerprints of the accused and sent the same with the chance prints lifted from the glasses recovered at the instance of accused to CFSL. On being cross-examined he stated that when the lock of the almirah was opened, apart from him, Ashish, Gurudarshan, Mahesh, Idrish and Gambhir were present. He denied the suggestion that the jewellery was planted by him on the appellant. He admitted that a dispute between landlord and tenant regarding supply of water was going on and that even an exchange of hot words had taken place over the issue of installation of water pipe line between the deceased and Gurudarshan, but he denied receiving any complaint at the police station regarding the same.

23. In his examination under Section 313 Cr.P.C., appellant stated that he was innocent and that since a dispute was going on between Gurudarshan Singh PW-2 the land lord of the deceased, and the deceased over water and electricity supply as also over the vacation of the premises, Gurudarshan Singh was the probable culprit. He admitted that he was employed with the deceased but stated that he had gone to his village to attend a marriage, but in the village he fell ill because of which he could not return thereafter.

24. Vide impugned judgment and order dated 6.5.2003, Learned Trial Judge has convicted the appellant for the offences punishable under sections 302/392 IPC. In doing so, reliance was placed on the last seen evidence emerging from the testimony of Helena PW-4, the evidence of Harvinder PW-20 of seeing the appellant running away from house No.I-10 Jangpura at about 10.30 PM on 22.6.1999, the evidence of recovery of jewellery from the possession of the appellant at the time of his arrest as deposed by SI Yashbir Singh PW-22, Ct.Rishi Raj PW-16 and Madan Rai PW-15 and the same jewellery being identified by PW-3 and PW-4 as the jewellery of the deceased in Test Identification Proceedings Ex.PW-17/F and the recovery of handle of a knife Ex.P-2 at the instance of the appellant from

the house, which he stated was the handle of the knife used by him in commission of the offence. Another circumstance relied upon by the learned Trial Judge in convicting the appellant was the slip Ex.P-21 recovered from the spot, which reads '*Nepali ladka maara hai*'. Learned Trial Judge has noted on page 50 of the impugned judgment that as per the report of the handwriting expert, the slip was in the hand of the deceased. Lastly, the learned Trial Judge has held that the recovery of the key of the house pursuant to the disclosure statement made to Insp.Gurucharan Dass, the recovery being as per memo Ex.PW-25/D was another piece of incriminating evidence.

25. It is unfortunate that the Learned Trial Judge has failed to correctly appreciate the evidence pertaining to the report Ex.PD of the handwriting expert, inasmuch as we note that the report Ex.PD of the handwriting expert notes: "*Handwriting evidence points to the writer of the specimen Hindi writings marked S-1 to S-4 being the person responsible for writing the questioned Hindi writings marked Q-1 and Q-2.*" We note that the specimen handwritings S-1 to S-4 are not the specimens of handwriting of either of the deceased, but are the specimens of handwriting of juvenile co-accused Sunil Kumar.

We are unable to comprehend as to how learned Trial Judge has

reached the conclusion that the slip was written by the deceased. On the contrary, the evidence of handwriting expert is unambiguous that the slip was written by co-accused Sunil. Since we are not concerned here with the co-accused Sunil Kumar, who as afore-noted was tried by the Juvenile Court, the evidence of the handwriting expert has to be ignored. In any case, since there is no evidence that the specimen handwriting of Sunil Kumar were taken with the permission of the Court i.e. in compliance with the provisions of Identification of Prisoners Act 1920 the said report would become inadmissible as evidence even against Sunil Kumar. Pertaining to the key of the house claimed to have been recovered at the instance of the appellant, we note that there is no evidence to link the key with the lock of the house. No witness of the prosecution has deposed that using the key, the lock to the main door of the house was opened. It is apparent that the learned Trial Judge has admitted in evidence the confessional statement of the appellant that the key in question was that of the lock of the house. This confessional statement is inadmissible in evidence. What is admissible in evidence is that pursuant to the disclosure statement made by the appellant to Insp.Gurucharan Dass he led the police to a spot not known to the police and got

recovered a key. Had the prosecution led further evidence to link the key to the lock of the house, only then could it be said that there was incriminating evidence of the appellant having knowledge of the spot where the key of the lock of the house was lying. Further, with reference to the arguments advanced by learned counsel for the appellant pertaining to the chance finger prints of the appellant purportedly lifted from a glass tumbler in the house after the appellant was apprehended, for the reason while obtaining the alleged specimen chance finger print impressions of the appellant, provisions of The Identification of Prisoner's Act 1920 were not followed, in that, no orders were obtained from the competent Court and the prisoner was not identified as required by law, the incriminating evidence pertaining to the report Ex.PE of the finger print expert has to be ignored.

26. At the hearing of the appeal, learned counsel for the appellant urged that as stated by appellant in his examination under Section 313 Cr.P.C., the appellant was innocent and since Gurudarshan Singh PW-2 was having dispute with the deceased on the issue of vacation of premises of PW-2 and also on the issue of water and electricity supply, there was high probability that PW-2 committed the murder of Mrs.Correa and Dr.Correa

and thereafter falsely implicated the appellant as the appellant, having served the deceased as a domestic help, was an easy scapegoat. Counsel urged that the investigating officer was obliged to investigate the matter keeping in view the aforesaid fact and he having not so done, investigation was tainted.

27. Counsel urged that the deposition of Harvinder Singh PW-20 of having seen the appellant running away from the stair case of the house of the deceased does not inspire confidence, for two reasons; firstly Harvinder Singh is not a resident of Jangpura, so his presence there is doubtful and secondly that at 10.30 PM in the night, persons walking or running on the street would usually go unnoticed by persons not known to them. Harvinder Singh PW-20 did not know the appellant. Even if he would have come across someone running on the street, it was unlikely that he would be able to recollect his face to be able to identify him later on, in the court. In this view of the matter, counsel urged that it was more probable that PW-20 was a planted witness.

28. Highlighting that Insp.Gurucharan Dass PW-26 has stated that on 29.7.1999, he went to the spot and with the help of duplicate keys made by a key-maker Idrish PW-1, opened the almirahs in the house of the deceased, counsel urged that in

view of the afore-noted admission by PW-26, the possibility of PW-26 taking out the jewellery from the almirah of the deceased at that time and planting the same upon the appellant cannot be ruled out.

29. Counsel urged that the chance prints lifted from the tumblers recovered at the instance of the appellant do not inspire confidence as PW-25 categorically stated that he summoned the crime team, but the crime team could not lift any chance prints. Thus, counsel urged that the chance prints lifted from the tumblers were not there at the time of recovery of the dead bodies and were planted later on to implicate the appellant. Counsel further urged that in any case the evidence of matching of finger impressions of the appellant with those lifted from the tumblers recovered from the spot at the instance of the appellant are inconsequent as the finger impressions of the appellant were not taken in compliance with the provisions of the Identification of Prisoners Act 1920. Counsel urged that in light of the law laid down in the decisions reported as 1994 (5) SCC 152 Sukhvinder Singh & Ors. Vs. State of Punjab, AIR 1980 SC 791 State of U.P. vs. Rambabu Mishra AIR 2003 SC 4377 State of Haryana vs. Jagbir Singh & Ors. the same need to be excluded.

30. Pertaining to the defence raised by appellant in his examination under Section 313 Cr.P.C. that Gurudarshan Singh PW-2 was having dispute with the deceased and therefore he was the probable assailant, we note that Gurudarshan Singh PW-2 has stated in his cross-examination that he has filed a civil suit for getting the premises vacated, but no criminal proceedings were pending for the same. We further note that all throughout the investigation, Gurudarshan Singh PW-2 cooperated with the police officials. He was present when the police first arrived on getting information about foul smell emanating from the house and the lock of the door was broken in his presence as deposed to by SI Baldhar Singh PW-25. He was a witness to the seizure memos Ex.PW-2/G of the glasses, Ex.PW-2/F of the handle of knife and Ex.PW-2/H of the shirt recovered at the instance of the appellant on 29.6.1999. Had Gurudarshan Singh been the real culprit, he would not have cooperated with the police officials during investigation. Instead, he would have made all efforts to shrug off the investigation.

31. Though Insp.Gurucharan Dass stated in his cross-examination that there was dispute between the landlord and the deceased regarding supply of water and that an exchange

of hot words also took place between the deceased and the owner of the house with regard to the installation of a water pipe line, but he categorically stated that no complaint regarding the same was received in the police station from the deceased. The afore-noted suggests that though there was some dispute pertaining to either water supply or to the possession of the land belonging to PW-2, but no criminal proceedings were pending in relation to the same. From the facts of the instant case, it is evident that the deceased and landlord PW-2 belonged to an economically sound stratum of the society and were educated people as the deceased was a doctor and PW-2 admitted that he was a graduate from Punjab University. It is not expected out of people of such credentials to go about killing each other over minor disputes pertaining to supply of water or vacation of premises. In any case there is no evidence, apart from traces of a motive emerging from a dispute between PW-2 and the deceased couple, to substantiate the defence of the appellant that it was PW-2 who committed the crime and the said defence is based on mere conjectures which cannot be accepted. In effect the contention that there was a possibility of PW-2 committing the murder and falsely implicating the appellant is rejected.

32. As far as Harvinder Singh PW-20 is concerned, true that he is not a resident of the locality and is not expected to be present in the locality at 10.30 PM in the night. But, this does not rule out his being at all present in Jangpura. PW-20 has clearly stated that he was there to drop one Talvinder Marwah at his residence and when he was returning from the house of Talvinder Marwah to his car, he saw the appellant and another boy running. We do not find any merit in the contention that Harvinder Singh PW-20 was a planted witness, for the reason, if police intends to plant witnesses to depose against the accused, it would be those who are vulnerable to being influenced by the police, for instance people illegally selling vegetables on the pavements, auto-rickshaw or riskshaw drivers not having license to drive in a particular area, vagabonds, etc. Such people due to their humble backgrounds would easily succumb to the pressure exerted upon them by the police. People such as Harvinder Singh PW-20, who is an active member of the Delhi Youth Congress, are not susceptible to being influenced by police. People such as him would rather be themselves influential enough to influence police officials, than being influenced by them. We may add, that no motive for PW-20 to

depose falsely has been pleaded by the defence. For said reason, his being a planted witness is ruled out.

33. Even if we ignore the testimony of PW-20, we have the evidence of Helena PW-4 who deposed of having seen the appellant at the house of the deceased, a day prior to her finding the house of the deceased locked from outside and two days prior to the recovery of the dead bodies of the deceased from their house. PW-4 stated that she was employed as a part time domestic help and appellant was employed as a full time domestic help with the deceased but sometime prior to the incident the appellant had left the job. Since his leaving the job, she was required to go to the house of the deceased twice a day to work. She further deposed that one evening when she went to the house of the deceased, she saw the appellant there. On her asking the appellant as to why he stole money of the deceased, a quarrel had ensued between the appellant and the deceased couple. She had left in the middle of the quarrel. Next day when she returned, she found the door of the house locked from outside and a day later when she returned, foul smell was emanating from the house of the deceased. It is not in dispute that Helena PW-4 worked as a part time domestic help with the deceased. She was therefore the most natural

witness and we see no reason to disbelieve her on the part that she saw the appellant with the deceased two days prior to the recovery of the decomposed dead bodies of the deceased.

34. The line of cross-examination of PW-2, PW-25 and PW-26 by the counsel for the accused, regarding a dispute between the landlord PW-2 and the deceased couple, indicates the personal knowledge of the appellant regarding the existence of such a dispute. This further adds credibility to the testimony of PW-4, that the appellant was employed with the deceased. Now, whether he continued to be employed with the deceased couple at the time of their death or he left their services prior to their death, may require some deliberation; but having believed PW-4 on that the appellant was a full time employee of the deceased, we see no reason to disbelieve PW-4 on that the appellant had left the job, prior to her seeing him at the house of the deceased. However, that he had left the job, is insufficient to cast any doubt on his presence in the house of the deceased on 22.6.1999 and discredit the last seen evidence given by PW-4, because there may be a number of reasons for the appellant returning to the house of the deceased. It has come in the evidence of PW-4 that no other full time domestic help had been employed by the deceased. It could be that

appellant wanted to again join the deceased or it could be that he visited the deceased merely to pay regards to the deceased or to collect any of his belongings kept in the house of the deceased since the time he was employed there. In any case, we need not contemplate as to why he returned to the deceased as it is irrelevant. But, for the reasons afore-noted, we find the evidence of last seen emerging from the testimony of PW-4, worthy of full credence.

35. Turning to the admission by Insp.Gurucharan Dass PW-26 that on 27.6.1999 he went to the spot and with the help of duplicate keys prepared by a key-maker Idrish PW-1 opened the almirahs in the house of the deceased, we note that PW-26 explicitly states that he got the almirahs opened only after learning about the recovery of the jewellery from the possession of the appellant. Obviously, he did so to confirm whether the jewellery so recovered belonged to the deceased couple or not. In any case, since the appellant was arrested in Bihar by the midnight of 26/27.6.1999 and the jewellery was recovered from him by early morning of 27.6.1999, as deposed to by PW-22, PW-15 and PW-16, there was no scope for PW-26, to have visited the house of the deceased in Delhi, on 27.6.1999, i.e. after the recovery of the ornaments from the appellant, and

thereafter to have planted upon the appellant, any jewellery recovered by him on unlocking the almirahs therein. In fact Inspector Gurucharan Dass PW-26 has admitted that from the almirahs, 5 empty jewellery boxes were found. We note that PW-26 is not the sole witness deposing about the empty jewellery boxes, but he is corroborated by Ashish PW-3 who in his cross-examination stated that the locks of the almirah were opened in his presence and empty jewellery boxes were found. Ashish PW-3 is a nephew of the deceased and we see no reason why he should depose falsely to corroborate the evidence of Insp.Gurucharan Dass PW-26.

36. Now, the recovery of such huge quantity of jewellery from the appellant at the time of his arrest is not doubtful as the same has been supported by three witnesses; being SI Yashbir Singh PW-22, Ct.Rishi Raj PW-16 and Madan Rai PW-15. The appellant nowhere in his defence claims to own the jewellery recovered from him. The fact of said jewellery being identified by Ashish PW-3 and Helena PW-4 in the test identification proceedings conducted by Sh.Daya Prakash PW-17, as the jewellery of the deceased, proves that the jewellery recovered from appellant belonged to the deceased. No plea suggesting that the deceased themselves gave the jewellery to the

appellant has been raised. This being so, the only inference that can be made is that the appellant stole the jewellery from the house of the deceased.

37. We ignore the evidence of recovery of handle of knife at the instance of the appellant, for the reason whether the knife was the one used in the offence or not, cannot be positively stated, as only the handle has been recovered and the blade of the knife has not been recovered. Even if the blade had been found, the doctor would at best have opined that the knife was the possible weapon of offence and nothing more. In any case, since the post-mortem report was available with the investigating officials prior to the recovery of the handle of knife and the report clearly stated that the cause of death was multiple stab injuries, the possibility of the recovery of the handle of knife being fabricated to strengthen the evidence against the appellant, cannot be ruled out. We therefore exclude said piece of evidence.

38. To summarize, we hold that from the evidence of Helena PW-4 and ignoring the testimony of Harvinder Singh PW-20 it stands proved that the appellant was in the house of the deceased in the evening of 22.6.1999. The deceased were not seen alive thereafter. The post-mortem reports of the deceased

establishes that they were killed somewhere in the late evening or night of 22.6.1999. From the testimony of Madan Rai PW-15 and SI Yashbir Singh PW-22 it stands proved that gold and silver jewellery was recovered from the house of the appellant. From the testimony of Helena PW-4 and Ashish PW-3 it stands proved that the said jewellery belonged to the deceased. The recovery of the fruits of the crime link the appellant to the crime itself. Thus, ignoring other evidence held incriminating by the learned Trial Judge, we hold that there is sufficient evidence wherefrom guilt of the appellant can be inferred.

39. The appeal is dismissed.

40. Since the appellant is still in jail we direct that a copy of our decision be sent to the Superintendent, Central Jail, Tihar, to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 28, 2010
mm / dk