

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-D-1111-DB-2009
Date of Decision: 13.08.2015**

Rishi Thapa

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. Bijender Dhankar, Advocate for the appellant.

Mr. Rajesh Gaur, Addl. Advocate General, Haryana.

Raj Rahul Garg, J.

Appellant Rishi Thapa assailed the judgment of conviction dated 03.10.2009 rendered by the then Sessions Judge, Gurgaon, whereby appellant was sentenced to imprisonment for life and fine of Rs.5,000/- with default clause under Section 302 IPC for committing murder of his master (employer) Shiv Dutt.

Complaint Ex.PA was lodged by Yogender Mohan, son-in-law of deceased. Deceased was retired Wing Commander from Air Force. He retired in the year 1982 and started living in H. No. M-3/53, DLF Phase-II,

Gurgaon since May, 2001. He had been living alone since 2007 as his wife had died in January, 2007. He employed appellant as servant on 23.03.2007.

As per complainant, on 11.02.2008 at about 6.00 PM, his wife Rashmi, who is daughter of deceased, had a talk with her father on telephone. He was alright at that time. The following day, at about 11.00 AM, she tried to talk to her father on his mobile No. 9810941110. But the phone was found switched off. His landline phone was found engaged each time. She informed complainant in this regard and thereafter both of them rushed to the house of deceased and found the house locked. They opened the door with duplicate key and found Shiv Dutt lying dead in the bed room on the bed. There was lot of blood in the room. Blood line there was also showing dragging of dead body of the deceased from one room to the another room upto the bed. His bed was covered with a blanket. He was having two injuries on the head and one on forehead. One blood stained iron pipe was also found lying in the room. One letter in which appellant Rishi Thapa had confessed the killing of Shiv Dutt was also found lying in the drawing room. On the basis of statement of complainant, case was registered. Investigations were conducted. From the spot, police taken into possession blood stained cloth piece Ex. P4, iron pipe Ex. P1, pillow Ex. P2, diary Ex. P3, vide memo Ex. PB. On 13.02.2008, the appellant was arrested. The appellant made disclosure statement Ex. PL; in pursuance with which he led the police party to Sikandarpur Border and got recovered from there mobile phone Ex. P41, Camera Ex. P42 and blood stained T-shirt Ex. P43 which were taken into police possession, vide Ex. PL/1. Cause of death was reported by Dr. Alka Singh, PW-12, due to head injury which was sufficient to cause death in

natural course of nature. Police moved application Ex. PR before learned JMIC, Gurgaon for obtaining specimen handwriting of the appellant for comparison by sending the same to the handwriting expert but he refused to give the same by making statement Ex. PR/1. After completion of necessary investigations, appellant was challaned in this case.

The appellant was charge-sheeted for committing offence punishable under Section 302 IPC. To which he did not plead guilty but claimed trial. After taking entire prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded wherein the defence taken by the appellant is this that he has been falsely implicated in this case.

We have heard Mr. Bijender Dhankar, Advocate, counsel for the appellant and Mr. Rajesh Gaur, Additional Advocate General for the State of Haryana besides appraising the entire evidence and material coming on record.

It is a case based on circumstantial evidence. There was no eye-witness of murder of Shiv Dutt-deceased. It is the settled proposition of law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstance must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

It is a case, in which an elderly person i.e. the deceased was living alone in his house. It is not disputed by the appellant that he was not working as domestic servant in his house at the relevant time. From the

statement of Yogender Mohan PW-3 and Bishamber PW-2, it stands proved on the file that appellant was working as domestic servant; and diary, Ex. P3, of appellant, recovered from the spot, clearly establishes that appellant was working as domestic servant with the deceased at the relevant time.

Yogender Mohan PW-3 deposed that on 11.02.2008 at about 6.00 PM, his wife Rashmi had a talk with his father Shiv Dutt and by that time he was alright. On the next day, she tried to contact him on telephone but the same was found engaged for a sufficient long time and even his mobile phone was found switched off. Under these circumstances, she gave a ring to him at about 12 noon and apprised him of the situation whereupon he left his office and he along with his wife rushed to the house of his father-in-law and found the house locked. When they opened the door with duplicate key, on entering the house, they found Shiv Dutt dead lying in a pool of blood and the appellant missing. The absence of the appellant from the place of occurrence is strong circumstance which can connect him with this crime. Not only this, even PW-2 Bishamber deposed that on 12.02.2008 at about 7.10 AM, the bell of his door rang up, upon which he opened the door and found accused Rishi Thapa standing outside. appellant told him that his employer had settled his accounts and he had got made his passport. He would go to his village where he would stay for a month and then leave for Dubai. On saying so, he took his photographs from a camera and on his asking he called Prahlad Tiwari. Thus from this statement, it is established that appellant was seen by PW-2 on 12.02.2008 at about 7.10 AM when he came to his house and informed him that he was leaving for his house telling him that his employer has settled his accounts.

The most clinching evidence against the appellant is his diary Ex. P3. In such writing addressed to the daughter of the deceased, the appellant admitted his guilt. He felt sorry from the daughter of the deceased and also expressed that he had tried to make the deceased understand for the last many days but he was not believing him and further that as his life was in danger therefore he had done this crime. In the end he also signed by writing his name as 'Rishi'. Transcription of the said writing is as follows:

“सरि दिदी अगर में बाबु जि को पैसा नै कता तो मेरे तो ज्यान से मारनेको धमकी दिया था दिदी मैंने बाबु जि को बहुत दिन से काहा पर मेरा बात का बिस्वास नै कीया और फरवरी ११ का मेरा ज्यान खतरे मा था इसीले इसब गर्न परा मे आप लोग को धन पैसा से बाबु जि को इसा नै कि मैंने आपका घर से कुछ नै ले गया नै हूं दिदी मुझे माफ गर्न -रिसी”

The above writing shows that the writing is Nepali language whereas it is written in Devnagri script. The appellant is a Nepali. As such, it is believed to be written by him and none else. There is another reason for such belief i.e when police moved application Ex. PR before Ms. Rupam, JMIC, Gurgaon for obtaining specimen handwriting of appellant for comparison by sending the same to Handwriting Expert, FSL, Madhuban. The appellant refused to give his handwriting by making statement Ex. PR/1, whereupon the learned JMIC, Gurgaon passed order Ex.PR/2. His refusal to give handwriting for comparison is again a circumstance which goes against the appellant. It compels the court to believe that had appellant given his handwriting for comparison, the same would have been tallied with the writing Ex. P3. The appellant has not taken the plea that it is not the writing

of somebody else with the signature of the appellant or that the same was got written by putting pressure on him. The writing Ex. P3 shows that the appellant was nursing grudge against the deceased being harsh which led the appellant to take life of an elderly person.

Further from the disclosure statement of appellant Ex. PL in pursuance with which he got recovered mobile phone Ex. P41, camera Ex. P42 and blood stained T-shirt Ex. P43. It is established that it is the appellant alone who has committed this crime. As otherwise, how the T-shirt, Ex. P43, of the appellant was with mobile and camera of the deceased, which were got recovered by the appellant by leading the police party to the disclosed place i.e. near the Sikandarpur Border. As per report of FSL, Ex. PD, human blood was found on the T-shirt of the appellant as well. Thus, from the above discussed circumstantial evidence on record, the chain of evidence is so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of appellant and further that these circumstances are conclusive in nature and consistent only with the hypothesis of the guilt of the appellant and these circumstances cannot be explained by any other hypothesis except guilt of the appellant.

Learned counsel for the appellant contended that the testimony of Yogender Mohan PW-3 is not believable as he is an interested witness being son-in-law of the deceased. He has not witnessed the occurrence but still named appellant in his statement Ex. PA alleging therein that in one letter found in the drawing room, the appellant had confessed to have killed Shiv Dutt. He deposed that appellant have never written any letter to him. As such, he was not conversant with his handwriting. Under these

circumstances, how can he say that any such confessional writing was that of appellant? The above argument of learned counsel for the appellant is not sustainable as confessional writing of Rishi Thapa-appellant was found at the spot which was taken into police possession vide memo Ex. PB and further that the absence of appellant from the house was also strong circumstance against him which led the complainant believe that the deceased was murdered by appellant. So far as writing Ex. P3 is concerned, we have already discussed in detail that it was in the hand of appellant, who is a Nepali, and the writing is in Nepali language and further that he had refused to give his handwriting for comparison when asked by the Court. As such on this point, the statement of complainant Yogender Mohan cannot be said to be doubtful in any way.

It was also the argument of learned counsel for the appellant that complainant as PW-3 deposed in his cross-examination that he had seen the iron rod and diary after the police had reached the spot, whereas, he had made a mention about the same in his statement Ex. PA. The statement Ex. PA was recorded by the police before reaching the spot. As such, the correctness of report Ex. PA itself becomes doubtful. This argument of learned counsel for the appellant is not sustainable as if we peruse the cross-examination of PW-3, he nowhere stated that he had seen iron rod or the diary only after the police reached the spot. He categorically stated that he had seen the iron pipe before coming of the police. He further deposed that he had also seen the diary prior to coming of the police. Police had recovered iron rod Ex. P1 and diary Ex. P3 from the spot, vide memo Ex. PB. This memo is dated 12.02.2008 i.e. the date when the matter was reported to the

police. In such a short time nobody can plant blood stained iron pipe as well the diary Ex. P3.

The next argument raised by the learned counsel for the appellant is this that Rashmi, daughter of the deceased, an important witness, has not been examined by the prosecution. As such, for this reason as well, appellant cannot be convicted and the chain of circumstances cannot be said to be complete. This argument is again not sustainable as Rashmi is not an eye-witness of the occurrence. Whatever is stated by PW-3 was to be stated by her. It is a case based on circumstantial evidence. With the above discussed circumstances which complete the chain of evidence so as to draw the conclusion consistent with the guilt of appellant, non-examination of Rashmi not in any way exercise dent in the prosecution case.

The argument of learned counsel for the appellant that no independent witness was joined at the time of recording of disclosure statement of the appellant, Ex. PL, and effecting of recovery in pursuance of that disclosure statement vide memo Ex. PB, as such, it makes the prosecution case doubtful. Had some independent witness joined at that time, the genuineness of the prosecution case would have been disclosed. This is a case where appellant had in fact confessed his guilt by writing Ex. P3. appellant himself led the police party to the disclosed place and got recovered his T-shirts Ex. P43 with the mobile and camera of the deceased. It is also the settled proposition of law that the testimonies of police officials are at par with the testimonies of non-official witnesses provided the same are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. In the case in hand, besides recovery of T-shirt of appellant

with the mobile phone and camera of the deceased there are other strong circumstances so as to complete the chain of evidence and connect appellant with this crime which have been already discussed in detail in the earlier part of this judgment.

It was lastly argued by the learned counsel for the appellant that there is no evidence on record to show that the deceased was last seen in the company of the appellant to connect him with the commission of this crime. This argument is again devoid of any force for various reasons. Undisputedly, appellant was domestic help with the deceased. Deceased was living alone in that house. At about 6.00 PM, Rashmi, daughter of the deceased, had a telephonic talk with him and thereafter in the morning when she tried to contact him she could not as his mobile phone was switched off and landline phone was reporting engaged. PW-2 Bishamber, another servant in the vicinity, deposed that on 12.02.2008 at about 7.10 PM appellant came to him; rang the door bell of his house and then he had a talk with appellant who reported that his employer had finalized his accounts and he has got made his passport. He would go to his village where he would stay for a month and then leave for Dubai. Just after the incident in question absence of appellant from the spot is strong circumstance against him. As the appellant is the one who was attending the deceased and was with him till the last; was in a position to explain the circumstances which led to his leaving the house or the circumstances under which the present crime was committed? Under these circumstances, even Section 106 of the Indian Evidence Act also comes into play and fastens the liability on the appellant.

As a result, if all the circumstances discussed above are taken

together cumulatively those would lead irresistible conclusion that appellant alone is the perpetrator of this crime.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment of conviction dated 03.10.2009 and order of sentence of the even date, this appeal is ordered to be dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

13.08.2015

Waseem