

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 86 of 2001

1. Jai Kishan S/o Harful Lohar aged about 34 years, R/o Village Busana, P.S. Guhana, District – Sonipat (Haryana). **(Dead)**
2. Krishna Kumar S/o Zile Singh Jat, aged about 32 years, R/o Village Busana, P.S. Guhana, District – Sonipat (Haryana).

---- Appellants

Versus

- The State Of C.G.

---- Respondent

For Appellants	:	Shri Ashok Verma, Advocate.
For Respondent/State	:	Smt. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Judgment On Board By Justice Pritinker Diwaker

28/04/2017

This appeal arises out of the judgment of conviction and order of sentence dated 12.1.2001 passed by the 7th Additional Sessions Judge, Raipur in ST No.39/2000 convicting each of the accused/appellants under Section 302, in the alternative 302/34, of IPC and sentencing them to undergo imprisonment for life and pay a fine of Rs.50,000/- with default stipulation.

02. As per prosecution case, deceased Pratap Singh was working in Sainik Transport, Gevra, Distt. Korba and also had a truck in the said company. Deceased/accused Jaikishan was also working in the said transport company alongwith the deceased, they used to live together

at Gevra and he too had a truck in the said transport company. Further case of the prosecution is that deceased/accused Jaikishan had the knowledge that deceased Pratap Singh was planning to go to Raipur with some money to deposit the same at Raipur. On 14.10.1999 deceased Pratap Singh came to Raipur carrying Rs.1.50 lacs cash with him. Deceased/accused Jaikishan also came to Raipur with accused/appellant Krishna Kumar and both these accused went to the room of Meera Hotel where the deceased was staying. It is the case of the prosecution that in the night intervening 14th & 15th October, 1999 when waiter of the hotel PW-11 Sandesh Kumar, as instructed by the deceased, knocked the door of the room of deceased Pratap Singh at about 2 in the night to wake him up, someone replied from inside "I have already woken up" and then he went back. However, at about 2.30 in the night when screams of someone came out from Room No.29, the hotel staff (PW-11 Sandesh Kumar, PW-3 Rajendra Prasad and PW-4 Jayendra) went to that room, door of the room was knocked at and then two persons staying in that room alongwith the deceased Pratap Singh, opened the door and pushing aside the hotel staff ran downstairs and by breaking open the glass door of the hotel fled from there. On said room being checked, Pratap Singh was found dead with a rope tied around his neck. Immediately thereafter information was passed on to the police by PW-3 Rajendra Kumar, Manager of the hotel, on which mereg intimation Ex.P/10 was recorded on 15.10.1999 at 2.55 am. Soon thereafter FIR (Ex.P/11) was registered on 15.10.1999 at 3 am at the instance of PW-3 against two unknown persons under Sections 302/34 of IPC.

03. Inquest over the dead body was conducted on 15.10.1999 vide Ex.P/2 and thereafter the body was sent for postmortem which was conducted on the same day by PW-18 Dr. Ullas Gonnade vide Ex.P/30 wherein he noticed ligature mark around the neck, the tongue was protruded & bitten between the teeth, one linear contusion was there on the right forearm, eyes were slightly protruded. In his opinion the cause of death was asphyxia due to strangulation and the death was homicidal in nature.

04. During investigation, the police had gone to Busana (Haryana) and there they recorded memorandum of the accused persons on 22.11.1999. On the memorandum Ex.P/15 of deceased/accused Jaikishan, seizure of cash of Rs.9000/-, one rope, one old black handbag was made from him vide Ex.P/16 and likewise on the memorandum Ex.P/17 of accused/appellant Krishna Kumar, seizure of one Yamha motorcycle and its purchase receipt was made from him vide Ex.P/18. As per their memorandum, after committing murder of Pratap Singh, both the accused persons looted Rs.1.50 lacs from him; deceased/accused Jaikishan gave Rs.45,000/- to accused/appellant Krishna Kumar and kept the remaining amount. After getting Rs.45,000/-, accused/appellant Krishna Kumar purchased a motorcycle which was seized vide Ex.P/18. On 24.11.1999 deceased/accused Jaikishan was medically examined vide Ex.P/26 and healed scar mark of 1 ½ cm over his right ankle was found. Accused/appellant Krishna Kumar was also medically examined on 25.11.1999 vide Ex.P/28 and healed scar mark of 1 cm over his right index finger in the middle was found.

05. After arrest of the accused persons, on 24.11.1999 test identification parade was conducted vide Ex.P/8 & P/9 by Executive Magistrate Ashok Tiwari (PW-8) wherein Gopal Chand (PW-2) and Jayendra Prasad Pathak (PW-4) duly identified the accused persons. Yet another TIP was conducted vide Ex.P/13 on 25.11.1999 by Executive Magistrate KGS Chandel (PW-7) in which PW-11 Sandesh Kumar and Raju also identified the accused persons.

06. As per Ex.P/3, one wooden chair, one glass and two pieces of glass bearing some fingerprints were seized. Vide Ex.P/4 blood found on the front and back portion of the gate of the hotel were scratched out and seized. Vide Ex.P/5 seizure of broken piece of glass on which some bloodstained skin was attached was made. According to fingerprint expert report Ex.P/21, the fingerprint found on the wooden chair was of deceased/accused Jaikishan. Seized articles i.e. blood scratched out from the front and back portion of gate of the hotel; broken piece of glass of the gate of the hotel attached with bloodstained skin; one bloodstained white towel & one handkerchief from the spot, blood scratched out from the wall & floor of the room; one packet containing bloodstained clothes of the deceased and another packet containing gamchha tied around the hand of the deceased and the rope found on his neck, were sent for chemical examination to FSL vide Ex.P/39. As per FSL report Ex.P/42, blood was found on all the above articles except on the fullpant of the deceased and that blood found on the Article B & C i.e. blood scratched out from the back portion of the gate and on the broken piece of the gate attached with skin was not sufficient for serological

examination. Further, as per Central Forensic Science Laboratory report (Ex. P/44), the blood found on the main gate of the hotel is similar to the source liquid blood of accused/appellant Krishna Kumar.

07. After filing of the charge sheet, the trial Court framed charge against the accused persons under Sections 302, in the alternative 302/34, 397 and 404 of IPC.

08. So as to hold the accused persons guilty the prosecution examined as many as 19 witnesses in all. Statements of the accused persons were recorded under Section 313 of CrPC in which they denied the circumstances appearing against them and pleaded innocence and false implication.

09. The trial Court after hearing counsel for the respective parties and considering the material on record, by the impugned judgment convicted and sentenced the accused persons as mentioned above.

10. During pendency of the instant appeal, accused No.1 Jaikishan has expired and this has been recorded in the order sheet dated 17.8.2016 of this Court. Despite best efforts, bailable warrant and arrest warrant could not be served upon accused/appellant No.2 Krishna Kumar and therefore, considering that this appeal is of the year 2001, we have appointed Shri Ashok Verma, an empaneled lawyer of the High Court Legal Services Committee to argue this case on behalf of the accused/appellant and the matter is being heard finally.

11. Counsel for the accused/appellant Krishna Kumar submits as under:

- that the appellant has been falsely implicated in this crime as on the date of incident he was at Sonipath (Haryana) and this fact has been duly proved by DW-1 Ram Mehar and PW-12 Satyawar.
- that the prosecution has utterly failed to prove that accused/appellant Krishna Kumar as well as even deceased/accused Jaikishan was aware about the fact that deceased Pratap Singh would be at Raipur on 14.10.1999.
- that the motorcycle allegedly seized from the possession of the accused/appellant was his own vehicle and moreover, this seizure has not been connected by the prosecution with the alleged commission of the crime.
- that the prosecution has utterly failed to adduce any evidence that the blood sample of the accused/appellant was drawn by anyone for sending the same for DNA test and this fact has been duly proved by PW-17 Dr. Smt. Pratiksha Chouhan.
- that the prosecution has also failed to produce any register showing that on the date of incident any guest had come to meet the deceased and even no register has been produced to show that the deceased was staying in the said hotel on the date of incident.
- that the evidence of last seen by PW-2 and PW-4 is not worth reliance.

12. On the other hand, State counsel supporting the impugned judgment has submitted that conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the

judgment impugned. She submits that there is no reason for this Court to disbelieve the statements of PW-2 & PW-4 who saw the accused persons fleeing from the spot at the relevant point of time on the date of incident after breaking the glass door of the hotel. The accused persons have also been correctly identified by the witnesses in the test identification parades, which have been duly proved by the prosecution. This apart, reports of FSL, CFSL, fingerprint expert also supports the prosecution case.

13. Heard counsel for the respective parties and perused the material on record.

14. PW-2 Gopalchand Agrawal, employee of the hotel where the deceased was staying and his dead body was found, has stated that the deceased used to stay in his hotel and was working in a transport company as clerk. In October, 1999 the deceased was staying in Room No.29 of his hotel and on that day, he (this witness) was on duty. He has stated that on the date of incident two persons came to his hotel in the evening and went to the room of the deceased and after some time, all the three (deceased and those two persons) came out of the hotel and at about 9 pm they returned to the hotel and went inside the room. He has stated that till 10 pm when he was on duty all the three persons were inside the room. Early in the morning at about 3-4 while he was sleeping in his house, he received information from the hotel that there is some serious trouble in the hotel and when he reached the hotel, he found police personnel there, the glass door of the hotel was broken and then he came to know that the deceased who was staying in Room No.29 has been murdered. This witness has correctly

identified the accused persons in the test identification parade vide Ex.P/8 & P/9. In cross-examination this witness remained very firm and nothing could be elicited from him by the defence to make his evidence untrustworthy or doubtful.

15. PW-3 Rajendra Prasad Chaturvedi, manager of the hotel, who is also lodger of merger intimation and FIR, has stated that the deceased was staying in his hotel in Room No.29. He came on duty at 9.30 pm and took over the charge from PW-2 Gopalchand Agrawal. He has stated that on that day waiter Sandesh Kumar (PW-11) was also on duty who was asked by the deceased to wake him up at 2 am and accordingly, Sandesh Kumar had reduced the said instruction in writing. When he asked Sandesh Kumar about compliance of the said instruction, he (Sandesh Kumar) told that he has already woken up the deceased. Sandesh Kumar had also informed him about the presence of two other persons in the room of the deceased. He has stated that at about 2.15 am he heard screams of someone from the room upstairs and then he alongwith other hotel staff immediately went upstairs; light and TV of Room No.29 were on; he called out deceased Pratap Singh on which somebody replied from inside the room "I have already woken up", however, he could not say as to whose voice it was. He has further stated that when he asked for opening the door, he noticed that light and TV were switched off and as soon as the door was opened, one person pushing him aside ran downstairs and soon thereafter another person came out from that room and ran away from there. They chased those persons, however, one of those persons broke open the glass gate of the hotel by his leg and thereby they managed

to flee from there. Thereafter, intimation of the said incident was given to the police and then dead body of the deceased was found in the room. This witness has also remained firm in his cross-examination and the defence has failed to elicit anything from him to its advantage.

16. PW-4 Jayendra Prasad Pathak, waiter of the hotel, while supporting the prosecution case has made almost similar statement as has been made by PW-3. He is also a witness of TIP vide Ex.P/8 & P/9 and has duly proved the same. PW-7 KGS Chandel and PW-8 Ashok Tiwari, the Executive Magistrates who conducted test identification parade vide Ex.P/13, P/8 & P/9, have also duly supported the prosecution case. PW-11 Sandesh Kumar, waiter of the hotel, while supporting the prosecution case has stated that on the date of incident the deceased was staying in Room No.29 and two other persons were also there in his room. On the instruction of the deceased when he knocked at the door of the room for waking up the deceased, someone from inside replied that "I have already woken up". However, at about 2.15 am having heard some strange voice emanating from the said room, the hotel staff went upstairs; at that time light and TV of Room No.29 were on; when manager of the hotel again knocked the door of Room No.29, somebody replied from inside "I have woken up". When the manager asked for opening the door, light and TV went off and thereafter, the door was opened and two persons came out and pushing aside the hotel staff ran downstairs hurriedly and managed to escape from the hotel by breaking open the glass door of the hotel. He is also a witness to test identification parade vide Ex.P/13 and has duly proved the same. In his cross-examination, he remained consistent

and nothing could be elicited from him by the defence to render his evidence untrustworthy or doubtful.

17. PW-15 Dr. RK Pandey had medically examined the deceased-accused Jaikishan on 24.11.1999 vide Ex.P/26 and noticed one healed scar mark of 1 ½ cm over his right ankle. PW-16 Dr. J. Phuljhale medically examined the accused/appellant Krishna Kumar on 25.11.1999 vide Ex.P/28 and found one healed scar mark of 1 cm over his right index finger in the middle. PW-19 Albert Kujur, investigating officer, has duly supported the prosecution case.

18. Close scrutiny of the evidence makes it clear that on 14.10.1999 deceased Pratap Singh was staying in a hotel at Raipur where his dead body was found. As per PW-11 Sandesh Kumar, PW-3 Rajendra Prasad and PW-4 Jayendra, at about 2.15 am when screams of someone came out from Room No.29, they went towards that room, door of the room was knocked at and then two persons staying in that room alongwith the deceased Pratap Singh, opened the door and pushing aside the hotel staff ran downstairs and by breaking open the glass door of the hotel fled from there and after informing the police about this incident, when the room was checked, Pratap Singh was found dead with a rope tied around his neck. The evidence of these witnesses finds support from the injury report of the accused/appellant vide Ex.P/28, according to which one healed scar mark of 1 cm over right index finger in the middle of the appellant was found, for which no explanation has been offered by him in his statement under Section 313 of Cr.P.C. Postmortem report of the deceased further strengthens the case of the prosecution according to which there was ligature mark

around the neck of the deceased, his tongue was protruded & bitten between the teeth, one linear contusion was there on the right forearm, eyes were slightly protruded; the cause of death was asphyxia due to strangulation and that the death was homicidal in nature.

19. In their memorandum, the accused persons have stated that after committing murder of Pratap Singh, they looted Rs.1.50 lacs from the deceased; deceased/accused Jaikishan gave Rs.45,000/- to accused/appellant Krishna Kumar and kept the remaining amount and after getting Rs.45,000/-, accused/appellant Krishna Kumar purchased a motorcycle. Pursuant to their memorandum (Ex.P/15 & P/17) seizure of cash of Rs.9000/-, one rope, one old black handbag was made from deceased accused Jaikishan vide Ex.P/16 and one Yamha motorcycle and its purchase receipt were seized from accused/appellant Krishna Kumar vide Ex.P/18. Witness to the memorandum and seizure PW-10 Rakesh Kumar has duly proved these documents.

20. Another piece of evidence against the accused/appellant is that he was duly identified by Gopal Chand Agrawal (PW-2) and Jayendra Prasad Pathak (PW-4) in the test identification parade conducted on 24.11.1999 vide Ex.P/8 & P/9 by Executive Magistrate Ashok Tiwari (PW-8). The appellant has further been identified by PW-11 Sandesh Kumar and Raju in yet another TIP conducted vide Ex.P/13 on 25.11.1999 by Executive Magistrate KGS Chandel (PW-7).

This apart, as per Central Forensic Science Laboratory report (Ex. P/44), the blood found on the main gate of the hotel is similar to the source liquid blood of accused/appellant Krishna Kumar.

21. Thus considering the overall evidence on available record, we are of the opinion that the prosecution has been successful in proving the guilt of the accused/appellant beyond all reasonable doubt and as such, the findings recorded by the trial Court holding him guilty under Section 302 of IPC are based on proper appreciation of the evidence calling for no interference by this Court. Resultantly, the appeal being without any substance is liable to be dismissed and it is dismissed as such.

As despite arrest warrant being issued, accused/appellant Krishna Kumar has not yet been arrested, a copy of this order be also sent to the Superintendent of Police, Raipur, who in turn shall ensure his immediate arrest for serving out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)

Judge

Sd/

(R.C.S. Samant)

Judge