

CRA D-578 & 581-DB of 2003

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

**Criminal Appeal D-578-DB of 2003
Decided on : January 23, 2017**

Shankar Chowdary

....Appellant

Versus

State of Punjab

....Respondent

Criminal Appeal D-581-DB of 2003

Jatinder Kumar

....Appellant

Versus

State of Punjab

....Respondent

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr. Sanjeev Sharma, Legal Aid Counsel
for the appellants.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of two criminal appeals, one bearing Criminal Appeal D-578-DB of 2003 filed by Shankar Chowdary and the second bearing Criminal Appeal D-581-DB of 2003 filed by Jatinder Kumar, both of them having been convicted

and sentenced by Court of Additional Sessions Judge (Adhoc)-cum-Fast Track Court, Patiala vide judgment dated 06.05.2003, as follows:-

Name of Convict	Offence under Section(s)	Sentence Awarded
Shankar Chowdary	460 IPC	Imprisonment for life.
Jatinder Kumar	460 IPC	Imprisonment for life.

Both the appellants-convicts pray that their appeals be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

Briefly stated facts of the case as per prosecution story are that Ms. Alka, aged about 30-35 years, a divorced woman had been residing alone in kothi No.19, Bhupindra Nagar, Patiala. She had employed Salinder Kaur wife of late Shri Jaswant Singh resident of Gurdarshan Nagar, Patiala as a domestic help for last about 2 ½ years prior to the incident. Salinder Kaur would come to house of Ms. Alka at about 08.30 A.M. and after working for an hour she would return to her house. On 04.08.2001 at about 09.00 A.M., when Salinder Kaur reached house of Ms. Alka along with milk as instructed earlier by Ms. Alka and she opened the door of the house, she found something covered by a white *chadar* (bed sheet) lying near the door. She called out to her employer Ms. Alka by saying *Didi* but that did not evoke any response. Salinder Kaur took off the *chadar* and found that Ms. Alka was lying there with her mouth gagged, her hands and legs tied with pieces of cloth and blood was oozing out from her nose. Salinder Kaur was shocked and became nervous. She called the nearby shopkeepers.

Several shopkeepers including one, namely, Ashok Kumar s/o Vidya Sagar of Ashoka General Store arrived at the spot. They observed that articles in the house were lying hither and thither and Ms. Alka had been murdered. It transpired that her murder took place at night time committed by some unknown persons who had trespassed in her house to commit theft. Ashok Kumar had informed police telephonically. Then a police party headed by S.I. Ajmer Singh (hereinafter referred to as Investigating Officer/I.O.) arrived at the spot, where statement of Salinder Kaur, complainant, was recorded as Ex. PC. The statement was thumb marked by Salinder Kaur. S.I. Ajmer Singh appended his endorsement below such statement and sent *Ruqa* to police station through constable Karnail Singh, on the basis of which formal FIR Ex. PC/2 was recorded at Police Station, Civil Lines, Patiala, under the signatures of S.I. Malkit Singh. The Investigating Officer called a photographer to the spot, who clicked snaps of the dead body. Since it was a case of unnatural death, the Investigating Officer carried out inquest proceedings and prepared a report Ex. PE in that regard. He deputed C-II Charan Singh and constable Nirmal Singh to get postmortem examination conducted on the dead body of Ms. Alka, handing over application PD/1 to them. The Investigating Officer prepared rough site plan of the place of incident as Ex.PN. Three *dupatas* with which arms and legs of the deceased had been tied and her mouth gagged, were taken into possession and converted into parcel Ex.P8 which was sealed by I.O. with his seal having inscription 'AS' and then the said parcel was taken into possession vide recovery memo

Ex.PO attested by Constable Karnail Singh. Thereafter, the police party proceeded towards Rajindra Hospital, Patiala, where the Medical Officer handed over to him a parcel containing clothes of the deceased i.e. her shirt and *salwar* (trouser) duly sealed with the seal having inscription 'SS' Ex. P9 and a parcel containing viscera of deceased along with sample seal. S.I. Ajmer Singh then submitted said parcels to Inspector Amarjit Singh, who took those into possession vide recovery memo Ex.PP attested by S.I. Ajmer Singh, I.O., and on return to the Police Station, the Investigating Officer deposited the case property with MHC Sukhpal Singh.

Constable Gurjinder Singh, who had clicked the photographs of the dead body at the spot produced negatives along with photographs Ex.P4 to 97 before S.I. Ajmer Singh, I.O., on 08.08.2001 who seized the same vide recovery memo Ex.PM.

Accused Hari Om @ Vijay, Jatinder Kumar, Shankar Chowdary and Kharbanda @ Shankar had been arrested by police of CIA staff, Patiala in case FIR No.682 dated 08.10.2001 for offences under Sections 399, 402 IPC, Police Station, Kotwali, Patiala. During the course of their interrogation in the said case, they confessed to their involvement in the instant case.

Hari Om @ Vijay accused, while being interrogated by Inspector Jaswant Singh in presence of ASI Kuldip Singh, ASI Jaswinder Singh and an independent witness Gurdev Singh resident of Samana suffered a disclosure statement that he had kept concealed four gold bangles wrapped in a glazed paper buried by him in earth after

digging it near NIS Chowk about which only he knew and could get the same recovered. His disclosure statement was recorded, which was signed by such accused and attested by the PWs. Copy of the statement is Ex.PU.

Accused Jatinder Kumar, while being interrogated had also suffered a disclosure statement that he had kept concealed FDR in the sum of Rs.40,000/- drawn on State Bank of Patiala, in the clothes in an *attachee* case placed in the room of his residential house, about which he had exclusive knowledge and could get the said FDR recovered. His disclosure statement was reduced into writing which was thumb marked by such accused and attested by the PWs, copy being Ex. PV.

Accused Shankar Chowdary, while being interrogated, had also suffered a disclosure statement that he had kept concealed and buried one gold bangle wrapped in a glazed paper, after digging the earth in the room of his residential house towards right side, while entering the room about which he had exclusive knowledge and could get it recovered. His disclosure statement was reduced into writing which was signed by such accused and attested by the PWs, copy being Ex.PW.

Thereafter, Hari Om @ Vijay while in police custody, in pursuance of the disclosure statement, got recovered four gold bangles wrapped in a glazed paper from the place so disclosed by him in his statement. On being weighed, the weight of the bangles came out to four *tolas*. The recovered bangles were converted into a parcel and sealed with seal of the Investigating Officer having inscription 'JS' and then

said parcel was taken into possession vide recovery memo, copy being Ex.PX.

Then Jatinder Kumar accused while in police custody led the police party to the disclosed place and got FDR copy Ex.PL recovered from the disclosed place which was seized vide memo Ex.PY. Then came the turn of Shankar Chowdary to get recovery effected in pursuance of his disclosure statement and he did so by leading the police party to the place specified by him in his statement and got recovered gold bangles wrapped in a glazed paper. On being weighed, its weight came out to be one *tola*. The bangles were converted into a parcel and sealed with the seal of Police Officer leading the police party, having inscription 'JS'. The parcel Ex. P3 was seized vide memo Ex.PZ attested by the witnesses. Rough site plans of places of recovery Ex.PAA, Ex.PBB and Ex.PCC were prepared. Statements of PWs were recorded and on return to the Police Station, Kotwali, Patiala, the case property was deposited with MHC Sukhpal Singh and intimation regarding the recoveries were given to SHO, Police Station, Civil Lines, Patiala.

On 15.11.2001 accused Kharbanda @ Shankar during the course of interrogation by S.I. Ajmer Singh, I.O., had made a statement under Section 27 of the Indian Evidence Act regarding his concealing share in the stolen articles i.e. pair of gold tops and gold nose pin near Bhakra Canal Bridge on Nabha Road after digging the earth in a pit near the bushes about which only he had exclusive knowledge and could get the same recovered. His disclosure statement Ex.PQ was recorded

which was thumb marked by such accused and attested by the witnesses. Then that accused in pursuance of his disclosure statement while in police custody got the recovery effected from the disclosed place. The recovered articles were converted into a sealed parcel Ex. P2 which was sealed with the seal having impression 'AS' of the Police Officer leading the police party. That parcel was taken into possession vide recovery memo Ex.PR attested by the PWs. The rough site plan of place of recovery was prepared. On return to the Police Station, the case property was deposited with MHC Sukhpal Singh. The Investigating Officer had got the recovered articles identified from Shri Vipul Kishore, brother of deceased Ms. Alka, who in the presence of Shri Jiwan Kumar had identified five gold bangles, one pair of gold tops and gold nose pin belonging to his deceased sister Ms. Alka, from amongst other gold ornaments and a memo of identification Ex. PE was prepared which was signed by Vipul Kishore and Jiwan Kumar. The bangles, ear tops and nose pin were converted into sealed parcels Ex. P1 to P3 sealed with the seal having impression 'AS' and those were deposited with MHC Sukhpal Singh. After completion of investigation and other formalities, challan against the accused, was prepared and filed in the Court of Illaqa Magistrate.

On filing of challan in Court of Illaqa Magistrate, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C. and then finding that offence under Section 460 IPC exclusively triable by Court of Sessions, Illaqa Magistrate committed the case to the Court of Sessions Judge, Patiala

from where it was entrusted to Court of Additional Sessions (Adhoc)-cum-Fast Tract Court, Patiala. After making consideration, charge for an offence under Section 460 IPC was framed against accused Kharbanda @ Shankar, Hari Om @ Vijay, Jatinder Kumar and Shankar Chowdary to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution examined as much as 17 witnesses as detailed below:-

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|-------|---|---|
| PW1 | — | Narinder Kishore |
| PW2 | - | Salinder Kaur |
| PW3 | - | Naval Kishore |
| PW4 | - | Sukhdev Singh, HC |
| PW5 | - | Dr. S.S. Oberoi |
| PW6 | - | Vipul Kishore |
| PW7 | - | Sukhpal Singh, MHC |
| PW8 | - | Chet Ram, HC |
| PW9 | - | Sukhpal Singh, MHC |
| PW10 | - | Indresh Khanna, Draftsman |
| PW11 | - | P.C. Jain, Manager Audit, State Bank of Patiala, Bhupinder Nagar Branch, Patiala. |
| PW-12 | - | Gurjinder Singh, Constable |
| PW-13 | - | Ajmer Singh, S.I. |
| PW-14 | - | Jaswinder Singh, Inspector |
| PW-15 | - | Amarjit Singh, Inspector |
| PW-16 | - | Jaswinder Singh, ASI |
| PW-17 | - | Krishan Chand |

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence and circumstances appearing against the accused was put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case as well as case bearing FIR 682 dated 09.10.2001, Police Station Kotwali and that no recovery was effected from them. The accused did not lead any evidence in defence.

After hearing arguments, trial Court convicted accused Jatinder Kumar and Shankar Chowdary for an offence under Section 460 IPC and sentenced them as detailed above. However, remaining two accused, namely, Kharbanda @ Shankar and Hari Om @ Vijay were acquitted of the charge framed against them. The convicts feeling dissatisfied with said judgment of conviction and sentence have filed the instant two appeals.

We have heard Shri Sanjeev Sharma, Advocate, Legal Aid Counsel for the appellants-convicts, Shri S.S. Dhaliwal, Additional A.G., Punjab, besides going through the record and we find that the appeals are without any merit and are doomed for failure.

In the instant case, four accused had been booked and chargesheeted for offence under Section 460 IPC, which provides that if at the time of committing of lurking house trespass by night or house breaking by night, any person guilty of such offence voluntarily causes or attempts to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house trespass by night or house breaking by night shall be punished with imprisonment for life or

with imprisonment of either description for a term, which may extend to 10 years and shall also be liable to fine.

Now it is to be seen whether the prosecution has been able to prove its charge against the accused conclusively and affirmatively, the answer has to be in affirmative.

From statement made by PW-2 Smt. Salinder Kaur, PW-3 Shri Naval Kishore, PW-1 Narinder Kishore, cousin brother of deceased Ms. Alka, it comes out that a robbery had taken place in the residential house of Ms. Alka i.e. Kothi No.19, Bhupindra Nagar, Patiala on 04.08.2001 at night and during its course i.e. lurking house trespass/breaking by night, Ms. Alka was done to death. The way her dead body was lying i.e. her hands, legs, tied with *Dupata* and mouth gagged go to show that it was so done by the intruders/criminals to avoid any resistance so as to commit robbery in a smooth manner.

From the medical evidence in the form of statement of PW-5 Dr. S.S. Oberoi, who had conducted postmortem examination on the dead body of Ms. Alka on 04.08.2001 at 04.10 P.M. at Rajindra Hospital, Patiala, it comes out that in his opinion, cause of death was Asphyxia due to smothering (a type of suffocated death) which was ante mortem and sufficient to cause death in a routine course of nature. In his opinion, the time that elapsed between injuries and the death was immediate and between death and postmortem, it was about 12 to 18 hours. He had proved carbon copy of postmortem report as Ex.PB, besides various documents. Some of the observations made by him are quite relevant which were to the effect that cyanosis was present on the

lips, tip of nose, ear lobule, finger tips and toe tips; the face was congested, livid and blotchy; the eyes were congested and protruding out; bloody froth was seen coming from the angles of the mouth; the tongue was drawn in between the teeth and the inner aspect of both the upper and lower lips was showing laceration corresponding teeth, upper and lower incisor teeth; the nose was showing contusion with a small sized abrasion on the lateral aspect of the nose and the septum of the nose was fractured. He had observed that all the thoracic and abdominal organs were congested.

From the evidence brought on file and the investigation conducted, it can be safely concluded that death of Ms. Alka had taken place on the intervening night of 03/04.08.2001. It was definitely a murder committed during the course of robbery.

From testimony of PW-6 Shri Vipul Kishore, brother of deceased, it comes out that on 04.08.2001 when on coming to know of the occurrence he had gone to house of deceased Ms.-Alka and had searched the house, then he came to know that five gold bangles, one pair of tops, one nose pin, Rs.800/- in cash, 30 silver coins and one FDR of Rs.40,000/- in the name of Alka bearing No.383 of State Bank of Patiala, Bhupindra Nagar Branch had been taken away. That means theft of those articles had taken place. From the evidence adduced by the prosecution, it comes out that on 09.10.2001 Jatinder Kumar while in police custody during the interrogation had suffered a disclosure statement that he had kept concealed FDR of Rs.40,000/-, drawn on State Bank of Patiala in the cloth *attachee* case in the room of his

residential house, about which he had exclusive knowledge and could get the same recovered and thereafter in pursuance of his disclosure statement Ex. PV had got the FDR Ex.PL recovered from the disclosed place, which had been taken into police possession. Similarly accused Shankar Chowdary, while being interrogated had suffered a disclosure statement that he had kept concealed one gold bangle wrapped in a glazed paper, after digging the earth in the room of his residential house towards right, while entering the room, about which he had exclusive knowledge and then in pursuance of disclosure statement Ex. PW had got gold bangle recovered, which had been taken into police possession. Recoveries had been effected from other two accused also but since they had been acquitted by the trial Court and no appeal has been preferred by the State or the complainant, therefore, that aspect need not be looked into and we are to deal with the case as regard to the recoveries effected at instance of Jatinder Kumar and Shankar Chowdary, appellants-convicts.

From the statement of PW-6 Vipul Kishore, it comes out that when on 01.01.2002, on being called by police to Police Station, Civil Lines, Patiala, he along with one Jiwan Kumar had gone there and he was asked to identify the stolen articles from amongst the other gold ornaments of the same type, he had identified five gold bangles, one nose pin, one pair of ear tops from amongst the other articles belonging to his sister and an identification memo signed by him as Ex.PE was prepared. As regards, the recovery of the FDR in the name of Ms. Alka, bearing No.383 of State Bank of Patiala, Bhupinder Nagar Branch, there

could not be any question of any ambiguity regarding its identity. Rather it stands established that accused-Jatinder Kumar and Shankar Chowdary were found to be in possession of the stolen articles, which had been taken away from the house of deceased-Alka during the robbery on the intervening night of 03/04.08.2001. Now, the recovery of such articles from these accused leads us to draw a presumption under Section 114(a) of the Evidence Act, which provides that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless, he can account for his possession.

In the present case, accused Jatinder Kumar and Shankar Chowdary having been found to be in possession of stolen goods, soon after the incident of robbery and murder are to be taken as thieves/robbers since they have failed to account for their possession of such articles. Once, it is proved that these two accused were there at the spot at relevant time and had taken away the articles belonging to deceased Ms. Alka, then in terms of Section 6 of the Evidence Act, it can be safely taken that murder of Ms. Alka was also committed by them, being part of *res gesta* since, the facts are so connected so as to form part of same transaction.

Learned counsel for the appellants tried to submit that co-accused of the appellants-convicts have since been acquitted by the trial Court, as such by applying principle of parity, the appellants-convicts be also given that benefit and acquitted of the charge. However, we are not convinced by this argument. A perusal of judgment passed by the trial

Court goes to show that the trial Court clearly fell in error in giving a clean chit to accused Kharbanda @ Shankar and Hari Om @ Vijay by giving reasoning which is least convincing and plausible. The recoveries got effected by them have been disbelieved by the trial Court on filmsy reasoning that those are from public places accessible to all sundry and no prudent man will conceal gold ornaments on a public place and would rather immediately dispose of the same or get those melted to destroy their identification.

The trial Court presumed that such accused were mentally very sharp and would act with all the prudence. Rather, the trial Court introduced its own intelligence, while making such observations it has to be taken note of that the persons who deviate from the righteous path and are on wrong side of law, treading on path of crime, it is too much to expect criminals to exercise their intellect and to behave in a manner like a mentally alert and intelligent person. There was no reason to doubt the recoveries got effected by accused Kharbanda @ Shankar and Hari Om @ Vijay but unfortunately the trial Court did so. In any case, since the State has not preferred any appeal challenging their acquittal, no action needs to be taken by this Court against them. However, one thing is clear that the appellants-convicts can certainly not claim parity with such accused, who have been granted a wrong benefit by the trial Court.

One more contention put forward by learned counsel for the appellants was that FDR in a sum of Rs.40,000/- said to have been got recovered by Jatinder Kumar, happened to be in the name of Ms. Alka-

deceased and he could not possibly get that amount encashed with pecuniary benefit coming to him. It is difficult to believe that he would keep the FDR in his possession and would get it recovered. Again we are not impressed by this argument. It depends upon mentality of a criminal as to how and for what reasons he opted to retain FDRs in the name of deceased when the booty was being shared by the robbers. He might be under some misconception that he would be able to get the FDR encashed in one way or the other. At the cost of repetition it may be stated that the standard of a prudent man can certainly be not applied to such type of criminals.

Learned counsel for the appellants-convicts had tried to assail the disclosure statements said to have been made by the appellants-convicts submitting that no independent witness was joined with the police party while recording such statements and getting the recoveries effected. However, we find that there is no merit in such contention. The statements of official witnesses are to be taken at par with those of independent witnesses, unless a strong motive is there with the official witnesses to depose falsely against the accused. No such motive has been brought on record. The police party was having Gurdev Singh an independent witness with it while effecting the recoveries, while recording statements of disclosure statements of accused and getting recoveries effected from them. Therefore, disclosure statements cannot be doubted and recoveries cannot be disbelieved solely for that reason. The prosecution had successfully proved its charge against the accused Jatinder Kumar and Shankar

Chowdary.

There is no illegality or infirmity in the said judgment qua these appellants-accused. Therefore, the conviction of both the appellants-accused is upheld. As regard the sentence part, keeping in view the brutal manner, in which an innocent, helpless, middle aged woman residing separately was done to death, there is no reason to direct any reduction in the sentence. Therefore, the impugned judgment of conviction and sentence as regards appellants-convicts is upheld whereas the two appeals filed by them are found to be without any merit and are dismissed accordingly.

(T.P.S. MANN)
JUDGE

(H.S. MADAAN)
JUDGE

January 23, 2017

rajneesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No