

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

(i) Crl. Appeal No.D-825-DB of 2003

Rajesh Kumar alias Raju

...Appellant

VERSUS

State of Punjab

...Respondent

(ii) Crl. Revision No.1938 of 2003

Dewan Chand

...Petitioner

VERSUS

Rajesh Kumar alias Raju and another

...Respondents

Date of Decision: December 06, 2019

**CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Kuldeep V. Singh, Advocate
for the appellants (in CRA No.D-825-DB of 2003).

Mr.Vishal Rattan Lamba, Advocate
for the petitioner (in CRR No.1938 of 2003).

Mr.Bhupinder Beniwal, Asstt. Advocate General, Punjab
for the respondent-State.

ARCHANA PURI, J.

This judgment shall dispose of two connected cases i.e. CRA
No.D-825-DB of 2003 and CRR No.1938 of 2003 arising out of the same
judgment of conviction and order of sentence dated 09.08.2003 passed by

learned Sessions Judge, Bathinda

Challenge in CRA No.D-825-DB of 2003 is to the judgment dated 09.08.2003 passed by learned Sessions Judge, Bathinda, vide which appellant Rajesh Kumar alias Raju was held guilty and convicted for the commission of the offence punishable under Sections 302, 404 and 449 IPC and sentenced as under:-

<i>Under Section</i>	<i>Sentence</i>	<i>In default</i>
302 IPC	Imprisonment for life and to pay fine of ₹1000/-	RI for two months
404 IPC	RI for two years and to pay fine of ₹500/-	RI for one month
449 IPC	RI for five years and to pay fine of ₹500/-	RI for one month

Likewise, even CRR No.1938 of 2003 has been filed qua impugned judgment by complainant Dewan Chand, thereby seeking ₹1 lakh to be paid as compensation under Section 357 Cr.P.C. on account of death of his wife and misappropriation of her gold ornaments.

The background facts in nutshell are as follows:-

That complainant Dewan Chand is working as commission agent and is residing at Gill Bazar, Mandi Rampura. His son Ramesh Kumar along with his family was living on the ground floor of the house, whereas, complainant and his wife Parwati Devi were residing on the first floor. His son Ramesh Kumar along with his wife had gone to Dabwali to visit his in-law's house. On 04.04.2000, in the morning, Dewan Chand had gone to his shop as in routine. At about 1.00 p.m., Dewan Chand had come to his house to take lunch. Then, he (Dewan Chand) found the dead body of his wife Parwati Devi lying in a pool of blood on the cot inside the room. He found injuries on her head, left side of the neck and right arm. Even, pair of

earrings from her ears, chain of gold from her neck and gold bangles from her arms which she was wearing in routine, were found to be missing. Letter 'PD' i.e. name Parwati Devi, were inscribed on the locket of the chain and the bangles. The value of the ornaments was about ₹25,000/-. The complainant suspected about the murder of Parwati Devi to have been caused by some unknown person, who also took away gold ornaments. Proceedings in the present case were initiated on the statement Ex.PM got recorded by Dewan Chand to SI Amrit Pal on 04.04.2000 and endorsement of SI Amrit Pal on the statement is Ex.PM/1, on the basis whereof, FIR Ex.PM/2 was recorded.

Thereupon, SI Amrit Pal had gone to the spot of occurrence and prepared rough site plan of the spot of occurrence, which is Ex.PN. Inquest report so prepared is Ex.PA. The dead body was sent for the post-mortem examination, which was conducted by Dr.Krishan Gopal. The concerned doctor handed over the copy of the post-mortem report, sealed packet of clothes of the deceased and sealed packet containing nose pin and chip of wood and police papers to ASI Sucha Singh.

Babu Ram was working as labourer in the shop of M/s Dewan Chand Ramesh Kumar. On 04.04.2000, Dewan Chand had directed Babu Ram to go to his house for getting filled empty gas cylinder. Accordingly, Babu Ram had gone to the house of Dewan Chand at about 11.00 or 11.15 a.m. to bring the empty gas cylinder. Said Babu Ram found Rajesh Kumar present on the first floor of the house and he was nervous. Rajesh Kumar was having cricket bat with him. He tried to conceal the same behind his back. Rajesh Kumar was wearing T-shirt of yellow colour and pant and

there were spots of red colour on the T-shirt. Babu Ram had enquired

about Parwati Devi from Rajesh Kumar, who replied that she is sleeping inside. Thereafter, Babu Ram had taken away empty gas cylinder from the first floor and had gone to his house to take lunch. One knife (chhuri) was lying on the cot, which was blood-stained.

Babu Ram had come to the house of Dewan Chand at about 2.30 p.m., with filled gas cylinder and then he came to know about Parwati Devi to have been murdered.

Intimation regarding murder of Parwati Devi was given to her son Ramesh Kumar, who came from Mandi Dabwali. It further came to the light that coins of ₹1 denomination totaling ₹900/- were also missing from the house of Dewan Chand. Even earlier accused Rajesh Kumar had committed theft in the house of Dewan Chand, once or twice. When SI Gurdeep Singh had gone to the place of occurrence, he found one pallet lying on the bed of Parwati Devi. One dupatta was also lying on the bed. They were stained with blood and they were converted into parcel and were taken into possession vide separate memos.

Blood from the knife lying on the bed was found mopped off with cloth. Sketch of the knife was prepared which was converted into parcel and taken into possession by separate memo. Even ASI Sucha Singh had produced copy of post-mortem report and three parcels before SI Gurdeep Singh, which were taken into possession separately.

On 05.04.2000, Investigating Officer Gurdeep Singh was present near Geeta Bhawan, Rampura, where Om Parkash produced the accused before him and the accused was arrested. During the course of interrogation, accused Rajesh Kumar had made disclosure statement about

having kept concealed one cricket bat in cluster of trees (beer) along Phul

road and he had kept concealed clothes, which were blood-stained, after washing them in the almirah in his residential room and that he had thrown the ornaments of Parwati Devi after putting them in a polythene bag in the latrine of his house. His statement Ex.PJ was recorded and thereupon, from the disclosed spot, accused Rajesh Kumar had got recovered cricket bat from the cluster of trees (beer). Small chip of wood was not there with the cricket bat. It was converted into parcel and taken into possession. Thereafter, from his house from the disclosed spot, accused Rajesh Kumar got recovered T-shirt and one pant from the almirah, which were having blood-stains. The clothes were converted into parcel and taken into possession vide Ex.PL. Hole of latrine bore was got dug but no recovery could be effected.

Parcels of wooden chip, knife (chhuri), Salwar, shirt, under-shirt, pallet (gadela), dupatta, T-shirt and pant were sent to the office of Chemical Examiner and Assistant Chemical Examiner vide report Ex.PS had found blood on wooden bat and wooden clipper, stains were found on knife, salwar, shirt, under-shirt, pallet, dupatta, T-shirt and pant. Stains on them were found to be blood. During the course of investigation, statements of various witnesses were recorded.

On completion of investigation, accused Rajesh Kumar alias Raju was sent up to face trial for the commission of the offence punishable under Sections 302, 404 and 449 IPC. Compliance of Section 207 Cr.P.C. was made and thereupon, the case was committed to the Court of Session.

Considering the report under Section 173 Cr.P.C. and documents annexed therewith, charge was framed against, accused-

appellant under Sections 302, 404 and 449 IPC, to which he pleaded not

guilty and claimed trial.

In an endeavour to establish its case, the prosecution has examined as many as 11 witness, besides adducing documentary evidence.

PW-1 Dr.Krishan Gopal has deposed about having conducted post-mortem examination on the dead body of Parwati Devi on 04.04.2000 at 5.30 p.m. He deposed about having found a chip of wood about 7 cm x 2 cm x 1/3rd cm irregular in shape, in the hair of head of dead body. He also found following injuries:-

- “1. Lacerated wound 10 cms x 3 cms on the top of head in the middle of right side.*
- 2. Lacerated wound 12 cms x 4 cms on the left side of top of head.*
- 3. Incised wound 10 cms x 2 cms on the left side of neck on its root. Underlying major blood vessels were cut.*
- 4. Multiple abrasions and contusions on the front and sides of the neck and front of upper part of chest above the breasts.*
- 5. Post-mortem incised wound 6 cms x 4 cms on the front of right fore-arm and wrist.*

On further dissection, there was fracture of vault of skull at multiple places under injuries No.1 and 2. Meninges and brain matter were contused. Clotted blood was present in the cranial cavity. Under-lying blood vessels, nerves and other soft tissue of injury No.3 was cut.

Organs of the thorax were health. Organs of the abdomen were also healthy. There was semi-digested food material present in the stomach. Chyle was present in the small intestines and fecal matter was present in the large intestines.

In the opinion of the doctor, the cause of death in this case was due to hemorrhage and shock. Injuries No.1, 2 and 3 were sufficient to cause death in the ordinary course of nature. Injuries No.1 to 4 were ante-

mortem and injury No.5 was post-mortem. The probable duration of injuries that elapsed between injury and death was immediate and between death and post-mortem was 2 to 8 hours.

He proved carbon copy of the post-mortem report, which is Ex.PA and also proved pictorial diagrams Ex.PA/1 and Ex.PA/2. He also deposed that on 20.06.2000, in pursuance of application Ex.PD having filed by the police, he opined that injuries No.1 and 2 on the body of deceased could be caused with a bat, vide endorsement Ex.PD/1. He further deposed that on application Ex.PE, he certified that injuries No.3 and 5 could be possible with weapon mentioned in the application and his endorsement is Ex.PE/1.

PW-2 Head Constable Amarjit Singh, PW-3 Constable Sukhwinder Singh and PW-3 Constable Surjit Singh, have tendered into evidence their affidavits Ex.PF, PG and PH respectively, which is formal evidence.

PW-5 Babu Ram has deposed about himself to be working as labourer at the shop of M/s Dewan Chand Ramesh Kumar. Further, he has deposed that on 04.04.2000 about having gone to the house of Dewan Chand, on his asking, at about 11.00 a.m. for bringing empty gas cylinder to replace the same with fully loaded gas cylinder. He has also deposed that when he had gone to bring empty gas cylinder, he found accused Rajesh Kumar, to be present, on the first floor of the house. On seeing him, Rajesh Kumar felt nervous and he tried to conceal an article like a cricket bat behind his back. He also deposed that accused was wearing T-shirt of yellow colour and pant and he found some spots of red colour on his shirt.

was sleeping inside. He further deposed that after procuring the empty gas cylinder from the first floor he had gone to his own house to take his meals and after getting the gas cylinder filled and taking his meals, he came to the house of Dewan Chand at 2.30 p.m. and there he came to know about Parwati Devi to have been murdered. He further deposed about recording of his statement.

PW-6 Mangat Rai has deposed about having received telephonic message from the house of Dewan Chand about Parwati Devi to have been murdered. He further deposed about having identified the dead body of Parwati Devi. Inquest report Ex.PC was attested by him. He also deposed about Rajesh Kumar to be cousin of Ramesh Kumar son of Parwati Devi. He also deposed that about production of accused Rajesh Kumar on 05.04.2000 by Om Parkash before SHO Gurdeep Singh and that he was interrogated in his presence. He also deposed about making of disclosure statement Ex.PJ by the accused and recovery of cricket bat on the basis thereof. He further deposed that it was taken into possession vide recovery memo Ex.PK. He also deposed about accused having got recovered his T-shirt of yellow colour and pant from almirah, which were taken into possession vide recovery memo Ex.PL. He also deposed that the accused had taken them to latrine and the ornaments of gold could not be retrieved, because whole of latrine was required to be demolished.

PW-7 Ramesh Kumar, is son of the deceased. He has deposed that on the fateful day, he along with his wife and children had gone to Mandi Dabwali, where he received telephonic message about his mother Parwati Devi to have been murdered, then he had come back to his house

and found that dead body of his mother to have been sent to hospital for

post-mortem examination. He further deposed about his relationship with accused Rajesh Kumar, who is his nephew. He also deposed that accused Rajesh Kumar had committed theft once or twice. He further deposed that ornaments which were not found on the dead body of his mother were removed by Rajesh Kumar accused. Even a sum of ₹900/- in one rupee coin was also found missing from his house after the murder of his mother.

PW-8 Dewan Chand, is the husband of victim Parwati Devi. He has deposed about the manner of himself having gone to his shop on 04.04.2000 at 10.00 a.m. He further deposed that his son along with his wife had gone to in-laws house at Dabwali and that when he left for the shop, Parwati Devi was alone in the house. He further deposed that at about 1.00 p.m., when he returned home in order to take lunch, he went to the first floor of his house, dead body of his wife was lying in the room on the cot. He further deposed about having found injuries on her person. He also deposed about details of gold ornaments which were found missing from the dead body of his wife, the value whereof was ₹25,000/-. He further deposed about one dagger to be lying on the cot, which was stained with blood. He also deposed that he got recorded his statement which is Ex.PM, which was signed by him in Urdu. He had shown the place of occurrence to the police. He also deposed that Babu Ram is his employee, to whom he had asked to go to his house for fetching empty gas cylinder. He deposed that Babu Ram had disclosed him when he had come to his house to fetch empty gas cylinder, accused Rajesh Kumar was present in his house and he had cricket bat in his hand and on seeing him, he tried to conceal the same. The said witness also deposed about accused to be grandson of his brother-in-law.

Earlier also, he also committed theft in the house once or twice.

PW-9 Inspector Arshdeep Singh had deposed about conducting of part investigation of this case in the manner of recording of statements of various witnesses.

PW-10 SI Amrit Pal is the Investigating Officer of the present case. He has deposed about recording of the statement of the complainant Ex.PM on 04.04.2000 and his endorsement upon the same Ex.PM/1, on the basis whereof FIR Ex.PM/2 was recorded. He further deposed about preparation of rough site plan Ex.PN, Inquest report Ex.PH and further deposed about having facilitated the conducting of the post-mortem on the dead body of Parwati Devi through ASI Sucha Singh. He also deposed about further investigation to have been handed over to Gurdeep Singh, SHO, on account of his transfer.

PW-11 SI Gurdeep Singh has deposed about conducting of further investigation of the case and detail of the investigation has already been reproduced in the earlier portion of the judgment.

Thereafter, learned Public Prosecutor tendered into evidence reports of Assistant Chemical Examiner Ex.PX, PY and PZ and then the prosecution evidence was closed.

On closure of the prosecution evidence, all the incriminating circumstances appearing in the prosecution evidence were put to the accused in their statement under Section 313 Cr.P.C. However, the accused denied those allegations. Accused Rajesh Kumar alias Raju pleaded innocence and taken the plea, which for the convenience of discussion, is reproduced as herein given:-

“I am innocent. My father Dev Raj used to entrust his earnings

to Diwan Chand but later on Diwan Chand mis-appropriated the entire earnings of my father. Even the locker of my father was being operated by Ramesh Kumar son of Diwan Chand. Due to this reason, the relations between my father and Diwan Chand were strained. On the day of occurrence a huge procession was held by the shopkeepers against the police and in order to save its skin, the police falsely implicated me in this case.”

In defence, accused-appellant examined DW-1 Harvinder Singh, who has deposed about having prepared plan of house of Dev Raj (father of the accused), which is Ex.D1. Thereafter, evidence of the defence was closed.

After hearing learned Public Prosecutor, learned counsel for the accused and on appraisal of the evidence brought on record, vide judgment dated 09.08.2003, accused Rajesh Kumar alias Raju was held guilty and convicted under Sections 302, 404 and 449 IPC and was sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, accused Rajesh Kumar alias Raju filed appeal CRA No.D-825-DB of 2003. Even, Dewan Chand, husband of the deceased Parwati Devi has filed CRR No.1938 of 2003, thereby seeking payment of ₹1lakh as compensation under Section 357 Cr.P.C.

Notice of both the appeal and revision was given to the concerned quarter. Even the lower Court record was requisitioned.

We have heard learned counsel for the parties and learned State counsel and have perused the record.

As spelt out from the evidence coming forth, as detailed

aforesaid, there is no direct evidence vis-a-vis commission of the offence by appellant-convict Rajesh Kumar alias Raju in the case in hand. The prosecution case hinges upon circumstantial evidence. In criminal trial, however, intriguing may be facts and circumstances of the case, the charges made against the accused must be proved, beyond all reasonable doubts and the requirement of proof, cannot lie in the realm of surmises and conjectures. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge, cannot afford to lodge its case in the realm of **“may be true”** but has to essentially elevate it to the grade of **“must be true”**. In a criminal proceeding, the court has a duty to ensure that mere conjectures or suspicion, do not take the place of legal proof and in a situation, where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent, but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. However, at the same time, it is also a settled law that commission of the offence can be proved not only by direct evidence, but also by circumstantial evidence or by the combination of both. Of course, while appraising circumstantial evidence, the Court has to draw inference as to whether or not, the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. The circumstances, from which the inference of guilt is to be drawn, has to be proved beyond reasonable doubt and shown to be connecting with the principal fact, sought to be established from the circumstances. Sufficient

connectivity of the accused with the circumstances pointing towards the guilt of the accused has to be established.

Now, proceeding further in the case, so far as, the fact of death of Parwati Devi is concerned, the same stands amply established from the medical evidence brought on record. The post-mortem report of the deceased has been proved as Ex.PA by PW-1 Dr.Krishan Gopal, who had conducted post-mortem examination on the dead body of Parwati Devi. He had given details of the injuries found on her person. He further categorically submitted that in this case, death was due to hemorrhage and shock and also deposed about injuries No.1 to 3 to be sufficient to cause death in the ordinary course of nature. He has also deposed about injuries No.1 to 4 to be ante-mortem and probable duration of time that elapsed between injury and death was immediate and between death and post-mortem was 2 to 8 hours.

Thus, in the light of testimony of PW-1 Dr.Krishan Gopal, the fact of death of Parwati Devi, as such, stands amply established.

Now, it has to be ascertained about the involvement of accused Rajesh Kumar in causing the death of Parwati Devi.

The FIR was got registered at the instance of PW-8 Dewan Chand, who got recorded his statement to SI Amrit Pal which is Ex.PM. Therein, the complainant had stated about Parwati Devi to have been murdered by unknown person. He came to know about the murder of Parwati Devi, only when he had returned to his house for taking lunch on 04.04.2000. It was only in the supplementary statement of Dewan Chand that Rajesh Kumar alias Raju was nominated as accused.

Keeping in view the same, testimony of Babu Ram PW-5 is of

utmost importance. PW-5 Babu Ram while appearing in the witness box deposed that on 04.04.2000 at about 11.00 a.m., at the asking of Dewan Chand, he had gone to his (Dewan Chand) house for bringing empty gas cylinder, which was to be replaced with fully loaded gas cylinder. He further deposed that when he had gone there, he found Rajesh Kumar accused to be present on the first floor of Dewan Chand's house and on seeing him, accused felt nervous and he concealed an article which looked like bat. He also deposed that accused was wearing yellow coloured T-shirt and a pant. Further, said witness also deposed that thereafter, he had gone to his house to take meals and after getting the gas cylinder refilled and after taking meals, he reached at the house of Dewan Chand at 2.30-3.00 p.m. and then he came to know about murder of Parwati Devi.

However, testimony of said witness is not above board. One has to keep in mind that said witness is an employee of M/s Dewan Chand Ramesh Kumar and that being so, an exaggerated effort, on his part to ensure success of the prosecution version, as such, cannot be ruled out. While in the witness box, he has deposed about having seen accused Rajesh Kumar on first floor, when he reached the house of Dewan Chand. Even if for sake of arguments, it is so assumed, that he had gone to house of Dewan Chand and spotted Rajesh Kumar, in the manner as deposed by him, then also, if he had seen T-shirt with red colour spots on the person of accused Rajesh Kumar, then definitely, this witness ought not to have proceeded to his house to have meals and not apprise Dewan Chand, his employer of the presence of the accused and manner, in which he tried to conceal the cricket bat and about his having spotted Rajesh Kumar with blood-stained T-shirt.

Ram had stated in his examination-in-chief, that he had returned back to the house of Dewan Chand at 2.30 p.m. In the cross-examination, he stated that he told that fact of blood-stained clothes of accused to Dewan Chand, when he came after getting the refilled gas cylinder at 2.30 p.m or 3.00 p.m. He further stated that police officials and Dewan Chand had come to spot, when he was present at the house of Dewan Chand. They came at about 3.00-3.15 p.m. to the house of Dewan Chand. He further stated in the cross-examination that immediately, he disclosed to Dewan Chand, that accused was seen by him in his house with blood-stained clothes. This fact was disclosed to Dewan Chand alone but he was not sure that murder of Parwati Devi was committed by none else than the accused. He also deposed that his statement was recorded by the police at about 10.30 or 11.00 p.m. He had got recorded in his statement that he was not sure that murder of Parwati Devi was committed by the accused. Why so, his statement was recorded after such a long gap, in pursuance of disclosure, having been made by this witness at about 3.00 or 3.15 p.m. This definitely raises doubt about the conducting of proceedings, as projected by the prosecution.

Furthermore, it is pertinent to mention that prosecution relies upon reports of chemical examiner, which are Ex.PX, PY and PZ. These reports relate to wooden bat, chhuri, salwar, kameez, shameez, wooden clipper, gadela, dupatta, T-shirt and pant, and Assistant Chemical Examiner had reported about blood having been found on exhibits No.1 & IV i.e. wooden bat and wooden clipper and pieces were sent to Serologist, Govt. of India. Furthermore, the report states that stains as indicated on the sketches overleaf were found on exhibits No.II, III(A), III(B), III(C), V(A), V(B), VI

(A) and VI(B) and those marked 'X' were tested and found to be of blood

and scrapings and pieces, therefore, were sent to Serologist, Govt. of India.

It is pertinent to mention that even though the aforesaid articles were sent to the office of Serologist but however, there is nothing, as such, coming on record as to whether, any expert opinion of the Serologist, as such, was in fact obtained. There is total silence on the part of the prosecution relating to the same and this itself is a major lacuna, which badly hits the prosecution version.

The Court also feels that there is merit in the submission of the learned counsel for the appellant that the recovery of blood-stained clothes is planted upon the appellant, particularly when there are two-three canals on the way. Why the appellant will throw the same at a place, which was accessible to general public.

Furthermore, it is claim of the prosecution about appellant-convict Rajesh Kumar alias Raju to have dishonestly misappropriated the gold ornaments of Parwati Devi. Even though the prosecution has projected appellant-convict to have misappropriated the gold ornaments worn by Parwati Devi before her death but, however it is pertinent to mention that no sufficient evidence, as such, has come on record about the said gold ornaments to have been taken away by the appellant-convict. In fact, the prosecution relied upon the disclosure statement so made at the instance of appellant-convict Rajesh Kumar alias Raju but however, on the basis thereof, no recovery of gold ornaments, as such, has been effected. Even though, it is claimed by the prosecution about digging of latrine hole as it was required to be demolished, to which there was resistance from the people of neighbourhood but however, there is nothing, as such, coming on

record about operation of demolition of bore hole of latrine having been

initiated, and obstruction of the same by the people of the neighbourhood. This itself belies the prosecution version qua the count of misappropriation of gold ornaments by the appellant-convict Rajesh Kumar alias Raju .

As per version of the prosecution, the appellant-convict had made extra-judicial confession to Om Parkash with regard to having concealed the bat, which was used by him to murder Parwati Devi and also about his blood-stained clothes. However, said Om Parkash, who was vital witness to be examined to establish the important link in the chain of the circumstantial evidence, has not been examined by the prosecution. Now, it is submitted by learned State counsel about said witness Om Parkash to have been given up by the Public Prosecutor on 20.02.2003 as having been won over by the accused. Even if it be so, it was required on the part of the prosecution to have called Om Parkash and to have cross-examined him after seeking permission of the Court vis-a-vis role assigned to him but however, it has not been so done. This is all the more important as Mangat Rai PW-6, who has been examined by the prosecution, has stated in his cross-examination that police officials had told him that the accused had confessed the guilt before Om Parkash. He also stated that some talk had taken place between Om Parkash, police officials and the accused, while he was made away and then he was called and told by *thanedar* that accused had confessed his guilt. He told him that accused had confessed about the fact where the bat and ornaments were lying. Thus, in view of the role assigned to Om Parkash and manner in which, PW-6 Mangat Rai deposed, it was required on the part of prosecution to have examined Om Parkash to elicit truth vis-a-vis his role qua unfolding of the commission of crime by

appellant-convict Rajesh Kumar. However, he was not so examined, which

in fact is amiss in the chain of evidence.

Thus, in the light of aforesaid discussion, it is concluded about prosecution to have miserably failed to establish the incriminating role of the appellant-convict beyond reasonable doubt. Therefore, the judgment of conviction and order of sentence dated 09.08.2003 passed by learned Sessions Judge, Bathinda are set aside. Since, appellant is on bail, his bail bond stand discharged.

Resultantly, finding merit in the appeal, the same is allowed.

In consequence thereof, the revision petition i.e. CRR No.1938 of 2003 filed at the instance of Dewan Chand for seeking compensation stands dismissed as having been rendered infructuous.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 06, 2019
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No