

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

**Crl. Appeal No.D-857-DB of 2003
Date of Decision: December 06, 2019**

Rajpal @ Raja and Shiv Kumar @ Shiva

...Appellants

VERSUS

State of Haryana

...Respondent

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

Present: Mr.Sachin Kaushik, Advocate for
Mr.Rakesh Nehra, Advocate
for the appellants.

Mr.Vikrant Pamboo, Deputy Advocate General, Haryana
for the respondent-State.

ARCHANA PURI, J.

Challenge in the present appeal, is to the judgment of conviction and order of sentence dated 20.08.2003 passed by learned Addl. Sessions Judge (Adhoc), Jhajjar, vide which appellants were held guilty and convicted under Section 302/34 IPC and sentenced to undergo imprisonment for life and to pay fine of ₹5000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

The background facts in nutshell are as follows:-

That, son of complainant Ram Kishan namely Shashi Kumar aged 22 years, in the morning of 07.07.2002, had left the house for going to Pipli Khera to visit the house of his maternal uncle but till evening, he had

not returned back. On 08.07.2002, when complainant had returned from Delhi to his house at about 10.30 a.m., then his brother-in-law Mahabir Singh s/o Sh.Daya Chand, resident of Pipli Khera was present at his house. He had apprised the complainant that yesterday evening, Rajpal and Shiv Kumar resident of Kheri Sadh had come to his house in an Ambassador car and Shashi Kumar was already at his house. Mahabir Singh had disclosed that he had offered them cold drinks but they did not agree to stay for the meals. They had taken Shashi Kumar along with them, on the pretext of giving him lessons for car driving and while saying so, they have taken Shashi Kumar along with them but did not turn up during night nor Shashi Kumar had returned to his house. Upon this, complainant along with Mahabir Singh, his brother-in-law, had gone to village Khalwar in search of Shashi Kumar, where they met father of Rajpal and on enquiry, he had disclosed them that neither Rajpal returned to the house nor any other person came with him. Then complainant and his brother-in-law, for the purpose of search of Shashi Kumar, had proceeded to Bahadurgarh to the house of daughter of complainant's sister, who was residing at Bahadurgarh. However, enroute when they reached at a place in the area of Rohad, they saw gathering with some police persons standing there. When they went towards that side, they were apprised about the dead body lying there. When they saw the dead body, they identified the same to be that of Shashi Kumar son of the complainant.

Proceedings in the present case were initiated on on the basis of the complaint Ex.PA, filed by Ram Kishan, soon after having identified the dead body to be that of his son Shashi Kumar and on the basis of said complaint, FIR Ex.PA/1 was got recorded. In the complaint Ex.PA, there is

also mention about Rajpal along with his companion Shiv Kumar, while taking away his son in the car, had strangled Shashi Kumar with the help of nylon string and they have thrown the dead body here. Rajpal along with his companion Shiv Kumar had committed murder of his son as Rajpal was having suspicion about Shashi Kumar to be having affair with his (Rajpal) niece namely Rinki.

During the course of investigation, photography of the spot with dead body was got conducted. During the inquest proceedings, the search of deceased was conducted, upon which, one purse of grey colour, containing two currency notes of ₹10/- denomination each were recovered and on one side of purse, there was photo of Shashi Kumar deceased and on other side there was photo of a girl Rinki, sister's daughter of Rajpal accused. The purse as well as photos were taken into possession vide separate memo. Rough site plan of the spot was prepared. Statements of the witnesses were recorded. Thereafter, the investigation was taken up by Bhim Singh, SHO. Post-mortem on the dead body was got conducted.

On 08.07.2002 itself, when Bhim Singh Inspector was investigating the case, accused Rajpal and co-accused Shiv Kumar were found travelling in the Ambassador car bearing No.DNA-3191. The said car stopped and taken into possession vide recovery memo Ex.PG. RC of the car also taken into possession. Both the accused were arrested in the present case. Later on, it became evident in the investigation that Sanjay s/o Risal Singh was owner of Ambassador car bearing No.DNA-3191 and he was using the same as Taxi. Even, accused Rajpal was also a taxi driver and on 07.07.2002, he had taken the car of Sanjay at about 01.00 p.m.,

saying that he wanted to go to the house of his relatives. On 11.07.2002,

Sanjay came to know that his car has been used in some murder case.

During the course of interrogation, accused Rajpal had made disclosure statement, thereby stating that he could point out the place, where the dead body of Shashi Kumar was thrown by him and his co-accused. His disclosure statement was recorded. Similar, disclosure statement was also given by Shiv Kumar, thereby stating that he can facilitate the pointing out of the place where the dead body of Shashi Kumar was thrown and his disclosure statement was also recorded and on the basis thereof, both the accused had got identified the spot, where the dead body was thrown. Demarcation memos were separately prepared.

On completion of investigation, challan was presented against both the accused. On presentation of challan, compliance of Section 207 Cr.P.C. was made and thereupon, case was committed to the Court of Session.

In pursuance of the commitment proceedings, on the basis of material coming forth, charge was framed against both the accused under Section 302/34 IPC, to which they pleaded not guilty and claimed trial.

In an endeavour to establish its case, the prosecution examined as many as 12 witnesses, besides adducing documentary evidence.

PW-1 Ram Kishan, at whose instance the prosecution proceedings were initiated, while in the witness box as deposed about his relationship with Shashi Kumar. He further deposed about the manner in which his son, in the morning of 07.07.2002 had proceeded to village Pipili Khera to visit the house of his maternal uncle and thereafter, he did not return back in the evening. He further deposed that on the next morning,

when he had returned to his house at about 10.30 a.m., then he found his

brother-in-law Mahabir Singh, to be present in his house and on enquiry, he has disclosed that on 07.07.2002, Rajpal and Shiv Kumar had come to his house and they had taken Shashi Kumar along with them, on the pretext of giving him lessons to drive a car. However, Shashi had not turned back. This witness further deposed that thereafter, they had started to make search and they had gone to village Khalwar. Mahabir accompanied to the house of Rajpal, where his father had met them and he had disclosed that neither Shashi nor Rajpal or Shiv Kumar had returned to the house. Thereafter, while they were going to Bahadurgarh in search of Shashi and reached near village Rohad, they saw persons standing on the road, where police was also present. On enquiry qua the people present there, they came to know about one dead body of a young to have been found there. On checking, the complainant identified the dead body to be that of his son, upon which, complaint Ex.PA was written and handed over to ASI Ranbir Singh. He also deposed that on search of Shashi Kumar, the police officials found a purse of black colour containing two currency notes and photos of Shashi and Rinki. He also deposed that Rinki is sister's daughter of Rajpal and the aforesaid articles were taken into possession vide memo Ex.PB, which was attested by him and Mahabir. He also deposed that there were ligature mark of some tape, around the neck of Shashi and tape was around the neck of Shashi, which was taken into possession by same recovery memo. He further deposed about having associated in investigation of the case on 08.07.2002 and also deposed about making of the disclosure statements made by Rajpal and Shiv Kumar, thereby stating that they can identify the spot, where the dead body of Shashi Kumar was thrown. Their disclosure

and Ex.PD. He also deposed about the preparation of demarcation memos which are Ex.PE and Ex.PF, which were also attested by him and Prem Chand. He further deposed about police having recorded his statement, wherein, he had stated about Rajpal to be annoyed with his son, as he was feeling that Shashi had developed illicit connection with Rinku, the sister's daughter of Rajpal, so he decided to eliminate him.

PW-2 Mahabir Singh, is the brother-in-law of the complainant, who has deposed about the manner in which on 07.07.2002, Shashi Kumar, his sister's son, had come to his house and further also deposed about the manner in which both accused Rajpal and Shiv Kumar had come to his house and taken away Shashi Kumar present in his house, on the pretext of giving him lessons of car driving and thereafter, Shashi had not returned back during the night. He further deposed that thereafter, they had set out in search of Shashi. He also deposed about the manner of their visit to village Khalwar to enquire about Shashi from the house of Rajpal. He also deposed that thereafter, they proceeded to Bahadurgarh, where sister's daughter of Ram Kishan was married. However, enroute near Rohad, there was gathering and he further deposed about the manner in which the dead body, so spotted there, was identified to be that of Shashi Kumar. Then they wrote an application Ex.PA, which was handed over to ASI Ranbir Singh. He also deposed that complaint was written by him at the instance of Ram Kishan. He further deposed about the manner of recovery of purse effected from the dead body, which besides the currency notes, also contained photograph of Shashi on one side and photo of Rinki on other side. He also deposed that in the meantime, Bhim Singh Inspector had arrived there, who had taken them to village Khalwar in search of the

accused. While they were proceeding to village Sadh from village Khalwar and reached near speed-breaker near the school, one Ambassador car was seeing coming from front site i.e. from the side of Rohtak, which was bearing registration No.DNA-3191 and he identified the said car to be the same, upon which the accused had come to his village. The Inspector stopped the car. Rajpal was driving the car and Shiv Kumar was sitting with him. Both of them were arrested. Even the car as well as its RC was taken into possession vide recovery memo Ex.PG, which was attested by him. His statement was recorded.

PW-3 Prem Chand has deposed about Shashi to be his cousin nephew. He further deposed about conducting of interrogation of both the accused by Inspector Bhim Singh in his presence and in the presence of Ram Kishan. He also deposed about disclosure statements so made by both the accused, which are Ex.PC and Ex.PD respectively and further deposed about the spot to have been identified by them, where they had thrown the dead body, upon which demarcation memos have been prepared, which are Ex.PE and Ex.PF, which were attested by him and Ram Kishan. His statement was recorded.

PW-4 Subhash Patwari has deposed about preparation of scaled site plan Ex.PH, at the instance of Ram Kishan.

PW-5 Dr.S.Jyoti Parkash, has deposed about conducting of the post-mortem on the dead body of Shashi Kumar on 09.07.2002. He deposed that on examination, **there was a ligature 0.5 cm. broad white in colour with Nylon going double around the neck (shoe lace). It was cut and sealed. There were two well defined ligature marks 0.5 cm. vide**

each. In the upper half of the neck, 2 cm apart. Ligature marks

completely encircled the neck. There were ecchymosis present around the ligature marks. Face was congested frothy bloody secretions were coming from the nostrils. Eyes were protruding and patechial hameorrhages were present in the eyes. Tongue was protruding out in between the jaws. He further opined that the cause of death in this case was due to asphyxia as a result of strangulation and the injuries were ante-mortem in nature and sufficient to cause death in normal course of nature. Probable duration between death and post-mortem was 24 to 72 hours. He proved the post-mortem report, which is Ex.PJ and police request is Ex.PJ/1. He also stated that strangulated could be possible with the help of fita (tape) shown to him.

PW-6 Constable Rajender Singh deposed about Special Report having delivered to Illaqa Magistrate on 08.07.2002.

PW-7 Head Constable Har Narain has deposed about having facilitated conducting of the post-mortem examination on the dead body and after conduting of the post-mortem, the parcel of the clothes, shoes as well as of lace of nylon and one parcel of watch etc., besides envelop containing seal impressions and inquest papers, were handed over to him, which he had further handed over to Bhim Singh Inspector and same were taken possession vide recovery memo Ex.PK.

PW-8 ASI Shree Niwas has deposed about recording of the formal FIR Ex.PA/1, on the basis of complaint Ex.PA, received in due course.

PW-9 Sanjay has deposed about himself in the year 2002, to be having one Ambassador car bearing registration No.DNA-3191. He was

using the same and plying it as taxi. He also deposed that he used to park at

at Mansarovar Park, Rohtak, when not on hire. Rajpal accused was also taxi driver. He also deposed that on 07.07.2002, he took his taxi at about 1.00 p.m., saying to him that he was in need of his taxi for going to the house of some relative and on this account, he had given the taxi/ambassador car to Rajpal. On 11.07.2002, the police told him that his car has been used in some murder case.

PW-10 ASI Ranbir Singh, is the Investigating Officer of the present case. He has deposed about conducting of initial investigation of the present case. He deposed about the manner of spotting of the dead body on 08.07.2002 and thereupon, complainant and Mahabir having come at the spot and they identified the dead body to be that of Shashi Kumar. He also deposed about the written complaint Ex.PA, to have been produced before him by Ram Kishan and his endorsement upon the same is Ex.PA/2, on the basis whereof, FIR Ex.PA/1 was got recorded. He also deposed about photography of the dead body to have been got conducted. He prepared the inquest report, which is Ex.PL. He further deposed that about the search of the pocket of the pant worn by Shashi Kumar, upon which, two currency notes of ₹10/- denomination each and photos were recovered and the same were taken into possession vide recovery memo Ex.PV. He further deposed that on one side of purse, there was photo of Shashi and on the other side, there was photo of Rinki. The rough site plan of the spot was prepared, which is Ex.PM. He also deposed that he recorded statements of witnesses. Then SHO Bhim Singh arrived at the spot and subsequent investigation was conducted by him. The application for facilitating conducting of the post-mortem on the dead body is Ex.PJ/1, which was addressed to doctor.

clicking of the photographs of the dead body. The photographs are Ex.P9 to Ex.P13 and the negatives are Ex.P13 to Ex.P16. The said photographs were handed over to Inspector on 11.09.2002.

PW-12 Bhim Singh Inspector has deposed about having conducted subsequent investigation in the present case. He deposed about having arrested accused on 08.07.2002, when they were intercepted while travelling in Ambassador car bearing registration No.DNA-3191 and the said car was taken into possession vide recovery memo Ex.PG. Vide same memo, even RC was taken into possession. He also deposed that on the next day, during the course of interrogation, accused Rajpal and Shiv Kumar had made disclosure statements qua pointing out the place, where they had thrown the dead body of Shashi Kumar. The said disclosure statements are Ex.PC and Ex.PD and on the basis thereof, they had pin pointed the place, where the dead body of Shashi Kumar was thrown, upon which, separate demarcation memos were prepared, which are Ex.PE and Ex.PF. He further deposed about recording of statements of witnesses. He also deposed about HC Har Narain to have handed over him parcel of the clothes and shoes of the deceased. One parcel containing Fita (tasma) and one parcel containing wrist watch and metallic chain of the deceased, besides one envelop and the same were taken into possession vide recovery memo Ex.PN. He also deposed about recording of statement of owner of the car in question and also of various other persons. Even the photographs produced by the photographer Surender Kumar were taken into possession.

Thereafter, the evidence of the prosecution was closed.

On closure of the prosecution evidence, all the incriminating

circumstances appearing in the prosecution evidence were put to the

accused in their respective statements under Section 313 Cr.P.C. However, the accused denied those allegations. Accused Rajpal @ Raja had taken the plea that he is innocent and has been falsely implicated in this case as he was named in this case my Mahabir due to family rivalry. He had never visited Pipli Khera of Najafgarh in the car. He was arrested from his village on 08.07.2002 and his signatures were obtained on blank paper. The car was not recovered from him.

Likewise, accused Shiv Kumar @ Shiva has stated that he has been falsely implicated by the police. He was arrested from the workshop at Rohtak, where he was working at that time. He was asked about the whereabouts of Rajpal, who is one of his acquaintance, being resident of neighbouring village. When he failed to tell whereabouts of Rajpal, his signatures were obtained on blank papers and he was falsely involved in this case.

However, the accused did not lead any evidence in defence.

After hearing learned Public Prosecutor, learned defence counsel and on appraisal of the evidence brought on record, vide judgment of conviction and order of sentence dated 20.08.2003, both the accused-appellants were held guilty and convicted for commission of offence under Section 302/34 IPC and they were sentenced, as already detailed aforesaid.

Feeling aggrieved by the aforesaid judgment of conviction and order of sentence, the appellants-convicts have filed the present appeal.

In pursuance of notice issued by the Court, learned State counsel made appearance on behalf of the State. Even the lower Court record was requisitioned.

We have heard learned counsel for the appellants as well as

learned State counsel and have perused the record.

At the very outset, learned counsel for the appellant has emphatically submitted that in the absence of any eye witness to the occurrence in question, the prosecution was duty bound to establish the chain of circumstantial evidence to this extent that it only leads to the conclusion of the accused persons being the culprits. However, it points out that the circumstantial evidence, so relied upon by the prosecution is incoherent and insufficient in form, continuity and content and falls short of the legally prescribed standards, to return a finding of guilt, on the basis thereof. Making reference to the so called circumstances, allegedly surfacing from the evidence brought on record, it has been emphatically submitted that the prosecution has failed to establish the guilt of accused persons, beyond shadow of reasonable doubt. It is submitted that the entire prosecution version, rests upon the testimony of the complainant, who is father of the deceased as well as his maternal uncle. It is submitted that since these witnesses are close relatives, they have in exaggerated effort deposed against the accused, so as to ensure their conviction. However, it is pointed out that their testimonies are not acceptable evidence to establish the linkage of the accused with the commission of the crime. Moreover, it is submitted that these witnesses had rivalry with the family of the accused, which itself gives a reason for them to depose against the accused. Even, motive for causing of the occurrence, as set up by the said witnesses, does not stand established. In view of the same, it is submitted that string of evidence, so relied upon by the prosecution, does not stand complete. Thus, prayer has been made for the acceptance of the appeal and to acquit the

appellants.

On the contrary, learned State counsel has refuted the claim of the appellants. He assiduously submitted that even though, there is no direct evidence vis-a-vis the murder of Shashi Kumar coming on record but however, the circumstantial evidence brought on record, does amply establish the complicity of both the accused in causing death of Shashi Kumar. It is pointed out that the chain of circumstantial evidence has been completely linked to the accused, which unerringly point the needle of guilt towards them. It is submitted that the prosecution has proved the case to the hilt and the guilt of the accused is deducible from the circumstances coming forth, as from the testimonies of the complainant Ram Kishan as well as PW-2 Mahabir Singh as well as connectivity of the accused with the Ambassador car, in which, the deceased was taken along with them, stands amply established. In the light of the same, it is submitted that prosecution has successfully established the guilt of the accused and therefore, prayer has been made for the dismissal of the appeal.

During the course of arguments, much emphasis has been laid upon the complainant and other witness Mahabir Singh, to be related to the deceased. On this count, it is pertinent to mention that relationship is not a factor to effect credibility of a witness. It is more often than not that relation would not conceal actual culprit and make allegations against an innocent person. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, then there is a tendency to drag in an innocent person against whom, a witness has a grudge, along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

Every case has to be adjudicated in the backdrop of its own factual position and the Courts have to adopt a careful approach and analyse the evidence, whether it is cogent and reliable. If the witnesses stepping into the witness box are related to the deceased, it only cautions the Court to scrutinize their statements more carefully.

In this backdrop, it is pertinent to mention that even though in the statement under Section 313 Cr.P.C., the accused have taken plea of they being falsely implicated on account of family enmity but however, what is the enmity so existing between the family of the deceased and the accused, as such, has not been disclosed. Even, no evidence in defence of any kind has been led to dilate on this subject. As such, vague assertion of enmity existing has been raised, which does not stand established.

Proceeding further, so far as, the fact of death of Shashi Kumar is concerned, the same stands amply established from the medical evidence brought on record. PW-5 Dr.S.Jyoti Parkash, Medical Officer has deposed about the conducting of post-mortem examination on the dead body of Shashi Kumar on 09.07.2002. He deposed about the detail of the injuries so found on the dead body, which have already been reproduced in the earlier portion of the judgment. He has also opined that cause of death in this case was due to asphyxia as a result of strangulation and injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature. He also proved the post-mortem report, which is Ex.PJ. In the light of the same, the fact of death of Shashi Kumar by strangulation, stands amply established.

To establish the incriminating role of appellants, the

prosecution has relied upon the testimonies of PW-1 Ram Kishan,

complainant as well as his brother-in-law PW-2 Mahabir Singh. Undisputedly, in the present case, there is no eye witness to the occurrence in question and the case rests upon the circumstantial evidence. In a case resting upon circumstantial evidence, motive plays a vital role and constitutes one of the important links in the chain of circumstantial evidence. Considering the same, at the very outset, it should be noted that ball was set rolling on the basis of the application Ex.PA filed by the PW-1 Ram Kishan, soon after identification of the dead body of his son. In the said application, the complainant had also assigned reason for causing death of his son. He has categorically stated that Rajpal in league with his friend Shiv Kumar, had murdered his son Shashi Kumar, on the suspicion that Shashi Kumar had illicit relations with his (Rajpal) niece Rinki of village Titiana. This motive so asserted in Ex.PA by the complainant, has also been reiterated by the complainant, when he stepped into witness box as PW-1. He has categorically stated about the search of the pocket of Shashi Kumar (since deceased) having conducted by the police official and upon the same, a purse was recovered. The said purse was further found to contain two currency notes of denomination of ₹10 each as well as photographs. The said photograph on one side was of Shashi Kumar deceased and on the other side, it was photograph of Rinki, who is sister's daughter of Rajpal. This photograph of Rinki and Shashi Kumar, to have been found from the purse of Shashi Kumar, speaks volumes about existence of close relationship between the two. Not only this, even Mahabir Singh has deposed to this effect and the said articles were taken into possession vide recovery memo Ex.PB. Even, PW-1 Ram Kishan had attested the said recovery memo.

Besides the same, even PW-10 ASI Ranbir Singh, has so deposed. Thus,

recovery of the said photograph itself strengthens the version of the prosecution about the existence of the motive and motive so projected for causing death of Shashi Kumar stands amply established.

Furthermore, it is important to mention that as per the version of the prosecution, on 07.07.2002, Shashi Kumar had reached the house of his maternal uncle. Even, PW-2 Mahabir Singh has so deposed in the witness box. In this regard, it is pertinent to mention that Mahabir Singh, maternal uncle of the deceased, has also categorically deposed that on that very evening, both the accused Shiv Kumar and Rajpal had come to his house, in ambassador car in the evening and took Shashi Kumar with them, on the plea of giving him lessons for the car driving and thereafter, Shashi Kumar did not come back. Even, Mahabir Singh while facing cross-examination had stated that Rajpal used to visit his house earlier also. Though, he stated that Shiv Kumar never visited his house earlier and that Shiv Kumar has visited his house on that very day but however, it is pertinent to mention that from the testimony of Mahabir Singh, it is evident that both the accused had stayed in his house for some period of time and very conveniently, Mahabir Singh could have know the name of Shiv Kumar during the stay of the accused in his house. In view of the same, further, it is pertinent to mention that lastly, Shashi Kumar, while being alive, was seen in the company of both the accused by Mahabir Singh and they had taken him in the ambassador car, whereupon, the victim had never returned back. This ambassador car, during the course of investigation, when Mahabir Singh had associated, Inspector Bhim Singh, he had spotted the Ambassador car bearing registration No.DNA-3191 and he identified

this car to be same, upon which accused had come to his house one day

earlier. It was intercepted and both the accused were found to be occupants of said car. Upon which, both the accused were arrested by Inspector Bhim Singh. The recovery of this car, while being in possession of the accused, is also an important connecting link. During the course of investigation, Sanjay was established to be owner of the car in question and he stepped into witness box as PW-4. He has categorically stated that in year 2002, he was having one ambassador car bearing registration No.DNA-3191 and he was using it and plying it as taxi. He further categorically deposed that on 07.07.2002, Rajpal accused, who was also a taxi driver, had taken his taxi at about 1.00 p.m., saying to him that he was in need of his taxi for going to the house of his relatives and thereupon, on 11th, he came to know about his car to have been used in murder case. Thus, the manner of accused to have come into possession of the ambassador car, as such, stands established. Rajpal had borrowed the ambassador car, which was in the name of Urvashi Finance Company, Narela. However, it is quite clear that when any vehicle is got financed, the finance company obtains the registration in its name and in these circumstances, no doubt, as such, can be raised about Sanjay to be plying the car as taxi.

Also further, it is a claim of learned counsel for the appellant that there is strong discrepancy relating to the removal of the lace around the neck of the deceased and manner of its taking into possession. It is submitted that complainant PW-1, in his examination-in-chief, had stated that lace was around the neck of the deceased and it was taken into possession by the Investigating Officer, while it was removed and sealed by the doctor at the time of post-mortem examination. However, in fact, it is

pointed out that in the post-mortem report, it is mentioned by the concerned

doctor that the lace was cut and sealed by him. Even, if such discrepancy, so exist, the same does not carry much weight. Few discrepancies are bound to exist even in the statements of the truthful witness and this does not throw doubt about the truthfulness of the prosecution version. Furthermore, even though, learned counsel for the appellant has mentioned about the over-writing relating to the date mentioned underneath the disclosure statement, on the basis whereof, place was identified by both the accused, where they had thrown the dead body, but however, it is pertinent to mention that this disclosure statement proves to be of no assistance to the prosecution as the disclosure so made, did not lead to discovery of any fact, which could be the direct outcome of such information. Rather, the dead body had already been spotted and discovered evidence could not be led in respect thereof. Therefore, such being the legal position, the over-writing of the date in itself also does not carry much weight.

In light of the aforesaid discussion, it is pertinent to mention that links in the chain of evidence, as such, have been established by the prosecution. It stands established that accused Rajpal had borrowed the car from his friend Sanjay and then took his other friend Shiv Kumar along with him and they followed the deceased to Pipli Khera after ascertaining his whereabouts. Both the accused were arrested by Inspector Bhim Singh, at the instance of Mahabir Singh, when he identified the ambassador car to be the same, in which, the accused had come to his house. Both the accused being occupants of the car in question at the relevant time of their interception, also is strong pointer towards their incriminating role. Even, as already detailed aforesaid, motive on the part of Rajpal for elimination of

Shashi Kumar also stands amply established. Lastly, Shashi Kumar, while

being alive, was seen in the company of the accused and he parted company of Mahabir Singh along with both the accused and did not turn back.

Considering the evidence in entirety, learned trial Court has rightly reached the conclusion that prosecution has successfully established the guilt of the accused beyond shadow of doubt. As such, the impugned judgment merits no interference.

As such, appeal sans merit and the same is hereby dismissed.

Accused-appellants namely Rajpal @ Raja and Shiv Kumar @ Shiva, are stated to be on bail. A copy of the judgment be sent to concerned Chief Judicial Magistrate, to get the accused-appellants arrested, so as to serve the remaining part of the sentence.

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

December 06, 2019
Vgulati

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No