

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1691 of 2005

NAUSHAD

..... APPELLANT

VERSUS

STATE OF KERALA

..... RESPONDENT

O R D E R

1. This appeal is directed against the judgment of the High Court of Kerala whereby the appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life for having committed the murder of one Ashraf. There were four other accused as well who were tried for offences punishable under Sections 201 and 212 of the Indian Penal Code and they were acquitted by the trial court. The trial court as well as the High Court have noted that the entire prosecution story was based on circumstantial evidence and had found seven circumstances against the appellant;

they being the animosity between the deceased and the appellant which was supported not only by oral evidence but even documentary evidence inasmuch as that two representations had been filed in the police station interse them; secondly, the extra judicial confession made over phone to P.W. 7 who was the President of the Local Panchayat; thirdly, the evidence of last seen before the incident by P.W. 8 the wife of the deceased who had seen the deceased and the accused together at about 6:00p.m. and the murder had been committed between 7:30p.m. and 8:00p.m. that evening, the Chemical Examiner's report that blood of the blood group of the deceased had been found on the clothes M0/4 and on the murder weapon Exhibit M0/3 and finally the suspicious conduct of the appellant as he allegedly absconded from the date of the murder i.e. 26th April, 1999 to 29th April, 1999, the date on which he was finally arrested.

2. Mr. Feroze Ahmed, the learned Amicus for the appellant has pointed out that these circumstances taken as a whole did not lead to the only conclusion that the appellant was guilty of the offence of murder. He has urged that the observations of the courts below that the deceased and the appellant had been seen together before the alleged time and murder was not borne out by the

evidence more particularly as semi-digested food had been found in the stomach of the deceased which indicated that the murder would have taken place much before 7:30 or 8:00p.m. He has further submitted that the story of the extra judicial confession allegedly made to P.W. 7 could not be believed as P.W. 7 in his cross examination stated that he had not been able to completely identify the person who had talked to him. He has further pointed that the recovery of the blood stained clothes Exhibit MO/4 had not found favour with the High Court. He has, accordingly, pleaded that the several links in the chain of circumstances which could lead to the only conclusion that the appellant was guilty of murder, were missing. Mr. G. Prakash, learned counsel appearing for the State of Kerala has, however, supported the judgment of the courts below.

3. We have considered the arguments of the learned counsel for the parties very carefully.

4. Every case of circumstantial evidence is based on various links in a chain. It is not only the number of circumstances that are important but the quality of the evidence which comes about. We are of the opinion that in the present case there are a large number of

circumstances which are proved by cogent evidence. The first circumstance is the documentary and oral evidence with regard to the strained relationship between the appellant and the deceased which is borne out by the fact that even the police had been called in. Likewise, the evidence of last seen referred to by P.W. 8 the wife of the deceased is also of great importance. It is true, as contended by Mr. Feroze Ahmed, that the presence of semi-digested food in the stomach of the deceased would indicate that the deceased would have had his food about 3 or 4 hours before his death which would bring it to about 3:00/4:00 p.m. and as such the murder could not have been committed at 7:00p.m. There is, however, no evidence to indicate as to when the last meal had been taken. We also find absolutely no reason to doubt the deposition of P.W. 7 to whom the appellant had made an extrajudicial confession. The fact that the telephone call had indeed been made is supported not only by P.W. 7 but also the note book entry maintained in the telephone booth which indicates that such a call had been made to the telephone number of P.W. 7. In this view of the matter, the attempt of P.W. 7 to help the appellant by giving a stray statement in his cross-examination that he had not been able to identify the voice of the appellant, is to no avail.

Both courts have considered this fact in detail and opined that it could not be held for certain that it was the appellant who had made the call although there were very strong indications that it was he who had done so.

5. We, accordingly find no merit in the appeal which is, accordingly, dismissed.

6. The learned Amicus Curiae will have his fee of ₹7,000/-.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
MARCH 29, 2011.

JUDGMENT