

CASE NO.:
Appeal (crl.) 1074 of 1997

PETITIONER:
Kanti Lal, etc.

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 21/04/2004

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
J U D G M E N T
With

CRIMINAL APPEAL NO.518 OF 2004
(Arising out of SLP(Crl.) No. 3078/1995)

K.G. BALAKRISHNAN, J.

Appellant Kanti Lal in Criminal Appeal No. 1074 of 1997 was tried along with one Govind Ram for the offences punishable under Section 302 read with Section 34; Sections 392, 404 and 201 IPC. Both the accused were found guilty of the offences punishable under Section 302 read with Section 34 and Sections 392 and 201 IPC. They challenged their conviction and sentence before the Rajasthan High Court and by the impugned judgment the conviction and sentence entered against these two accused was confirmed by the High Court. Aggrieved by the judgment of the High Court, the present appeal is filed.

Govind Ram, whose conviction was confirmed by the High Court, moved a Special Leave Petition and the same was dismissed by this Court. He later filed a review petition and the order dismissing the S.L.P. was reviewed vide order dated 4.2.1999 and notice was issued. Leave is granted in that matter.

The case against the accused was that they caused the death of one Bheema Ram and robbed him of the money possessed by him. On July 29, 1985, PW-7 Ridmal Singh found a dead-body in a tank situated within the Jalore Fort area. He went to the Jalore Police Station and gave Exh. P-13 information. PW-14 Station House Officer immediately visited the spot and prepared Exh. P-71 site inspection note and held inquest over the dead body of the deceased. Near the place of incident, he found a foot print, which was visible on a 'kuchha' floor, and prepared a mould of the same. The mouth of the dead-body was found gagged with a socks. PW-35 conducted the post-mortem examination and certified that the death of the deceased was due to asphyxia. PW-2 Mancha Ram Ghanci identified the dead-body to be of his own brother, Bheema Ram, and he revealed that the deceased was an employee of M/s Hazarimal Ramesh Kumar, Commission Agents, Sumerpur, and that the deceased used to go to various places to collect the money due from the customers of the firm. PW-39 Bhagwat Singh conducted detailed investigation of the case and his investigation revealed that deceased Bheema Ram had left Sumerpur on July 27, 1985 with a receipt-book and a list of persons from whom money was to be collected in favour of his employer. He carried a money-bag and was expected to return to Sumerpur by July 29, 1985. Bheema Ram did not return on July, 29, 1985, and the investigation further revealed that during the night intervening 27th and 28th July, 1985, Bheema Ram had stayed with the appellant, Kanti Lal, at his residence situated at village Doodsi, and that in the morning of July 28, 1985 he came to the bus stand accompanied by Kanti

Lal. On 27th July, 1985, the deceased had collected about Rs.20,862.92p from various customers of his employer. PW-39 arrested the co-accused Govind Ram on 2nd August, 1985. An amount of Rs.10,000/- and a handkerchief which belonged to the deceased Bheema Ram were recovered from the residential house of Govind Ram under Exh. P-35. The shoes worn by Govind Ram were also taken into custody. Appellant, Kanti Lal, was arrested at Bombay and pursuant to the information furnished by him, a watch, a bush-shirt, a money-bag, printed receipt-books, pieces of a torn bank draft and a knife were recovered from him. The Investigating Officer also found on site inspection on 9th August, 1985 that the names of the appellants, Kanti Lal and Govind Ram and that of the deceased Bheema Ram were found written on the wall of the Rani Mahal of the Jalore Fort. Various photograph of this graffiti were taken and the signatures of the accused were also obtained for comparison. The Investigating Officer also conducted an identification parade in the presence of PW-47, the Asstt. Collector-cum-Magistrate First Class, Jalore, and the witnesses who participated in the identification parade, identified both the accused as the persons with whom the deceased Bheema Ram had been found moving. The bush-shirt, the khaki bag, the receipt-books and other articles allegedly used by the deceased were identified by the prosecution witnesses as the articles belonging to the deceased and he finally filed the charge sheet.

The counsel for the appellants strongly urged before us that the circumstantial evidence produced by the prosecution was not sufficient to prove the guilt of the appellant. It was contended that the investigation officer cooked up evidence to cause serious prejudice to the accused. It was submitted that the graffiti allegedly written by the accused and the deceased was not noticed by the investigating officer at the time he visited the place of incident on 29th July, 1985, but he could find it only on 9th August, 1985 and, therefore, the same must have been done at the instance of the prosecution. The counsel for the appellants also contended that various recoveries allegedly effected by the investigating officer were not satisfactorily proved and the connection of the present appellant to any of the articles recovered is not proved. The counsel for the appellants drew our attention to the various aspects of the case.

At the outset, we must observe that though this is a case of circumstantial evidence, the investigating officer conducted a very detailed investigation and to the best of his ability, he collected all material relevant to prove the guilt of the accused. The appellant Kanti Lal was arrested by him at Bombay. As against him, the evidence of recovery of various articles allegedly belonging to the deceased, is a strong circumstance to prove his guilt. A bush-shirt and a ball pen belonging to the deceased were recovered at the instance of the appellant, Kanti Lal. PW-10 Ramesh Kumar identified these articles as belonging to the deceased. A receipt-book and a list of persons from whom the deceased had collected money; pieces of a torn bank draft; and a money bag were also recovered at the instance of the appellant, Kanti Lal. All these articles were identified as the articles belonging to the deceased. Appellant, Kanti Lal had no satisfactory explanation how he came to be in possession of these articles. The fact of possession of these articles with the appellant only leads to the most probable inference that he was responsible for the death of the deceased, especially when the appellant had no case that he had come to possess these articles for any other reason.

Another strong circumstance which was proved against the appellants was that they were found in the company of the deceased at various places immediately preceding the day of death of the deceased. PW-9 Jamuna deposed that she had gone to village Doodsi to purchase some medicines and while she was returning she saw deceased Bheema Ram with appellant Govind Ram and they told her that they were going to Jalore. PW-12 Kheta Ram was known to deceased Bheema Ram and he deposed that he had met Bheema Ram and appellants, Kanti Lal and Govind Ram at Subhash market and they told him that they were going to Jalore Fort and that later he came to know after three-four days that the dead body of Bheema Ram was found at Jalore Fort. PW-16 Tek Chand deposed that on 27th July, 1985 deceased Bheema Ram had come to his shop and received Rs.2,000/-, for which he issued Exh. P-30 receipt. He also deposed that on the next day, he saw Bheema Ram standing in front of

the shop of appellant Govind Ram. PW-18 Chhoga Ram is a jeep driver and he deposed that at about 8 PM, appellant, Kanti Lal and his co-accused Govind Ram requested him to take them from Jalore to village Doodsi and that he took them in a vehicle and left them at village Doodsi and received Rs.80/-. PW-46 Virendra Kumar is a tea shop owner at Jalore bus stand. He deposed that the appellants Kanti Lal and Govind Ram came to his restaurant on 28th July, 1985 and had consumed 'Masala Dosa' and 'Mosami Juice'. It is also pertinent to note that this witness identified the appellants in the identification parade, later held in the presence of the Magistrate.

The evidence adduced by the prosecution would show that the appellants were moving with the deceased Bheema Ram during the relevant period. Another circumstance, which would prove the presence of the appellants at Jalore Fort during the crucial time is the graffiti found on the wall of the Rani Mahal of Jalore Fort. PW-29 took photographs of these writings and the same were compared with the specimen signatures of the appellants (Exh. P-74 & P-75]. The expert opinion Q-1 and Q-3 was to the effect that the specimen signatures of the appellants were similar to the graffiti allegedly written by the appellants.

We are of the view that the prosecution successfully proved the case against the appellants and the recovery of various articles used by the deceased, from the possession of the appellants, Kanti Lal and Govind Ram; the evidence of the witnesses who found the appellants in the company of the deceased during the relevant period; and the other circumstantial evidence clearly established the guilt of the accused and the Sessions Court rightly found the appellants guilty of the offences charged against them.

The High Court was fully justified in confirming the conviction and sentence of the appellants and we see no merit in these appeals to take a different view. The appeals are dismissed accordingly.