

CASE NO.:
Appeal (crl.) 425 of 1996

PETITIONER:
THAMAN KUMAR

RESPONDENT:
STATE OF UNION TERRITORY OF CHANDIGARH

DATE OF JUDGMENT: 06/05/2003

BENCH:
S. RAJENDRA BABU & G.P. MATHUR

JUDGMENT:
JUDGMENT

2003 (3) SCR 1190

The Judgment of the Court was delivered by

G.P. MATHUR, J. These appeals under Section 2 of Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 have been preferred against the judgment and order dated 27.3.1996 of High Court of Punjab and Haryana at Chandigarh by which the appeal preferred by the State was allowed and the judgment of acquittal passed by the learned Sessions Judge, Chandigarh was set aside and the appellants were convicted under Section 302 read with Section 34 IPC and were sentenced to imprisonment for life and a fine of Rs. 2,000 each and in default to undergo Six months R1.

The case of the prosecution in brief is that the appellant Ashok Kumar (A-1) is owner of house no. 138 in Sector 35, Chandigarh which had been converted into a guest house known as Friends Guest House. Thaman Kumar (A-2) and Rajesh Singh (A-3) were employed as servants in the aforesaid guest house. The deceased Bhanwar Singh was a rickshaw puller and he used to bring customers to the guest house for which Ashok Kumar (A-1) used to pay him commission. Sometimes he used to sleep in the garage of the guest house. A considerable amount towards commission, it is alleged, had fallen due regarding which he made a demand in the night of 23.12.1989 and a dispute took place. At about 12.30 p.m. in the night A-2 and A-3 strangled Bhanwar Singh by tying a chadar which had been rolled in the shape of a rope around his neck and pulling it from the two ends. At that time, A-1 sat over the chest of the deceased and had caught his both the hands firmly so that he may not be in a position to offer any resistance. Constables Ram Mehar and Suresh Kumar, who had been assigned patrol duty in Sector 35 were passing in front of house no. 138 and heard shrieks raised by deceased Bhanwar Singh. They entered the house after opening the front gate and saw the incident happening in the grange in which electric light was on and the doors were slightly open. They caught hold of A-2 and A-3 on the spot but A-1 managed to escape by scaling the rear boundary wall. Suresh Kumar then gave information about the incident at about 1.05 hours to Police Post in Sector 36 by telephone. Surender Kumar, SI, then came to the spot, took stock of the situation and recorded the statement of Ram Mehar, Constable. He then gave a Rukka to Suresh Kumar, Constable which he took to the Police Station in Sector 39 on the basis of which an FIR was registered at 02.20 a.m. on 24.12.1989. Surender Kumar, SI, also held inquest on the body of the deceased Bhanwar Singh. The body was sealed and was sent for post-mortem examination. After completing investigation, he submitted charge-sheet against all the three accused.

The Judicial Magistrate, First Class, Chandigarh by his order dated 16.4.1990 committed the case to the Court of Sessions. The learned Sessions Judge framed charge under Section 302 read with Section 34 IPC against all the three accused who denied the case of the prosecution and claimed to be tried. The prosecution in support of its case examined 11 witnesses

including 2 eye-witnesses and filed some documentary evidence. Ashok Kumar (A-1) in his statement under Section 313 Cr.P.C. denied the case of the prosecution, but admitted that the guest house in Kothi No. 138, Sector 35 was run by his brother Om Prakash and he also looked after the same. He stated that when he was sleeping in his house, Rajesh Singh (A-3) came there at about 12.30 in the night and informed him about the presence of a dead body in the garage of the guest house. He then went to the guest house and after seeing the dead body, he informed the police, which came there and arrested him and other co-accused on the spot at that very time in spite of their protests. Thaman Kumar (A-2) also denied the case of the prosecution and stated that he and Rajesh Singh were working in the guest house and used to sleep in a room, which was situated on the back side of the garage. Rajesh Singh awoke him at about mid-night and told that a dead body was lying in the garage. Rajesh Singh then went to inform the owner of the guest house and thereafter A-1 came there, who informed the police. The Police then came to the spot and arrested all the three accused. Rajesh Singh (A-3) also gave a similar statement.

The learned Sessions Judge disbelieved the case of the prosecution and acquitted all three accused by his judgment and order dated 22.8.1990. Feeling aggrieved, the State of Union Territory at Chandigarh preferred an appeal which was allowed by the High Court by the judgment and order dated 27.3.1996 and all the three accused were convicted and sentenced as mentioned earlier.

We have heard Shri Sushil Kumar, learned Senior Advocate for A-1, Shri M.N. Rao, learned Senior Advocate for A-2 and A-3 and Ms. Kamini Jaiswal, Advocate for the State and have gone through the entire evidence on record. Before we deal with the contentions raised by learned counsel for the appellants, it will be convenient to take note of the evidence which has been adduced by the prosecution.

PW.4 Ram Mehar, Constable, has stated that he along with Constable Suresh Kumar had been assigned patrol duty in Sector 35 in the night intervening 23rd and 24th December, 1989. He left the Police Post at 10.00 p.m. and after going around the market in Sector 35 and 35-B, they were passing near Kothi No. 131 in Sector 35 at about 12.30 in the night (00.30 hours on 24.12.1989). After hearing shrieks from inside the Kothi, both of them entered the compound after opening the front gate and saw that in the garage, where there was electric light, two persons namely A-2 and A-3 were strangulating Bhanwar Singh by tying a bed sheet around his neck and A-1 was sitting on his chest and was pressing his arms. After seeing the police personnel, A-1 ran away by scaling the rear boundary wall. A-2 and also A-3 tried to run away but they were caught on the spot. He gave information about the incident to Police Post in Sector 36 by telephone. Some time thereafter, PW.1 1 Surender Kumar, SI, came there, who recorded his statement, which is Ex.PH. He was given a Rukka by PW.1 1 which he carried to Police Station, Sector 39 and on the basis of the same, the FIR of the occurrence was formally registered at 2.20 a.m. on 24.12.1989. The other eye-witness examined by the prosecution is PW 5, Suresh Kumar, Constable. He has given exactly similar statement and has corroborated the version given by PW.4 Ram Mehar Constable.

PW.1 Dr. P.N. Gupta of General Hospital Sector 16, examined accused Thaman Kumar (A-2) on 24.12.1989 and found the following injury on his person:

"Reddish contusion situated on ulna aspect of right hand (inner). The contusion size was diffused of about 5 cm x 2 cm.

Nature of injury was simple, caused by blunt weapon and probable duration was within six hours."

After seeing the 'Chadar' Ex.P1, the witness stated that the possibility of the injury having been caused as a result of pulling of the same could not be ruled out. The post-mortem on the body of the deceased Bhanwar Singh was

conducted jointly by Dr. A.S. Gill, Senior Medical Officer and PW.2 Dr. G. Dewan Medical Officer, General Hospital Sector 16. The following ante-mortem injury was found on the body of the deceased :

"Ligature mark brown coloured encircling whole of neck measuring 39 cms, all around the neck 1½ cms. on the sides and back and 2 cms. in front of the neck anteriorly placed on the thyroid cartilage horizontally margins were irregular, ecchymosed and base of ligature was dry and parchment like and membranous. On cut Section there were multiple ecchymotic spots on subcutaneous tissue and muscles. Thyroid cartilages was broken cricoid cartilage was also broken.

Larynx and trachea-Mucosa of larynx and tracheae were congested and showed multiple petichial spots. Both right and left lungs were congested. Stomach was empty and healthy."

In the opinion of the Doctors, death was caused due to asphyxia caused by strangulation. The post-mortem report has been proved by PW.2 Dr. G. Dewan.

PW.7 Sardara Singh, who is the brother of the deceased, was examined in order to prove the motive for the commission of the crime, but he did not support the case of the prosecution and turned hostile. He denied to have given any statement to the police to the effect that the deceased Bhanwar Singh used to take persons to the guest house for which he was paid commission by the owners and that A-1 owed him Rs. 42,000 towards the aforesaid amount. PW.5 Mohinder Singh, Head Constable, Police Post, Sector 36 proved the extracts of Daily Diary Report (DDR) of 23rd and 24th December, 1989, which have been marked as Ex. PK, EX.PL, EX. PM and EX.PN. PW.9 Jasbir Singh in-charge of Police Post, Sector 36, deposed that he had gone to the spot at 3.30 a.m. on 24.12.1989 and at that time PW. 11, Surender Kumar, SI, was present and was investigating the case. He further deposed that A-1 was produced by Gurnam Singh, a member of village Panchayat, on 24.12.1989 and he was taken into custody. PW. 11 Surender Kumar, SI in police Post Sector 36 deposed that he received a telephonic message at about 1.05 a.m. on 24.12.1989 from PW.4, Ram Mehar, Constable from Kothi No. 138, Sector 35, and thereafter he rushed there along with some other constables. He found the dead body of Bhanwar Singh lying on the floor of the garage and a rolled over bed sheet was lying near the head of the dead body. A-2 and A-3 were also present on the spot in the custody of the two constables. He then recorded the statement of PW.4, Ram Mehar, which was read over to him and after he has signed the same, it was sent to the Police Station, Sector 39 and a formal FIR was recorded. He has further deposed that he held inquest on the body of the deceased, took the bed sheet and other articles into his possession and sent the body of Bhanwar Singh for post-mortem examination. He also sent A-2 for medical examination as there was an injury on his hand. He has given details of the various steps taken by him during the investigation of the case. PW. 10, KIP Singh, SHO of Police Station, Sector 39, has deposed that after receiving information, he went to the Friends Guest House in Sector 35 and found that Surender Kumar, SI was already present there and was conducting investigation of the case. He has further deposed that after completing the investigation he prepared the charge-sheet and submitted the same. PW. 3 Jaswant Singh is draftsman, who prepared the site plan, Ex. PG on the pointing out of Surender Kumar and has proved the same.

According to the statements of A-2 and A-3 under Section 313 Cr.P.C. both were working in the guest house and both of them used to sleep in a room on the back side of the garage. At about mid-night A-3 woke up and after finding that a dead body was lying in the garage informed A-2 about it and also went to inform the owner of the guest house. Shortly thereafter, A-1 came to the guest house and informed the police and it was thereafter that the police came to the spot and arrested all of them. A-1 has also stated that after getting information about the presence of a dead body in the garage of the guest house from A-3 he came there at 12.30 in the night and informed the police, which arrived on the scene and arrested all of them.

Thus, A-2 and A-3 admit their presence and further all the three accused also admit the presence of the dead body of deceased Bhanwar Singh in the garage of the guest house. But, according to their version, the police arrived at the scene on the information given by A-1. The version of prosecution, however, is that PW.4 Ram Mehar and PW.5 Suresh Kumar heard some shrieks when they were passing in front of the guest house (Kothi No. 138) and they saw the accused strangulating the deceased Bhanwar Singh in the garage. It is to be examined as to which of the two versions is correct. Ex. PK is copy of entry no.45 made at 9.30 p.m. on 23.12.1989 in DDR of Police Post Sector 36 and it records that Constables Ram Mehar and Suresh Kumar had been deputed for night patrol duty in Sector 35. Ex.PL is the copy of entry made at 1.05 a.m. on 24.12.1989 in DDR of Police Post Sector 36 and it records that Constable Ram Mehar had given information on telephone that some fight was going on and three persons had assaulted a man in Kothi No. 138 in Sector 35. After receiving this information Surender Kumar, SI. along with some other police personnel were sent to the place of occurrence. PW. 4 has stated that he searched for a telephone in the guest house and it took him about 20-25 minutes to find the same as rooms in the guest house were bolted from inside. The entry made in DDR of Police Post Sector 36 at 1.05 a.m. corroborates the testimony of PW 4 and P.W5. It may be noticed that at the time when this information was given by PW. 4, other police personnel were not present on the spot as PW. 11 Surender Kumar, SI came there subsequently. The two constables could not have cooked up a false story regarding three persons assaulting a man in the short period which elapsed between their reaching there and in giving telephonic information at about 1.05 a.m. Ex. PM is copy of the entry made at 2.20 a.m. on 24.12.1989 in DDR No. 52 of Police Station Sector 39 regarding lodging of the FIR of the incident on the basis of which a case was registered as Crime No. 303 of 1989 under section 302 read with Section 34 I PC. Ex. PH/12 is the copy of the FIR and it bears an endorsement that a copy of the same was received by the Ilaqa Magistrate at 4.00 a.m. on 24.12.1989. These documents have been proved by PW. 8 Mohinder Singh. The statement of PW. 2 Dr. G. Dewan shows that the dead body was deposited in the mortuary at 4.15 a.m. on 24.12.1989. The fact that the copy of the FIR was received by the Ilaqa Magistrate at 4.00 a.m. conclusively establishes that the FIR containing full details of the prosecution version of the incident had been actually lodged much earlier. The documentary evidence and also the promptness with which the FIR was lodged, its copy was sent to Ilaqa Magistrate and the body was sent to the mortuary lends great assurance to the truthfulness of the prosecution case. The medical evidence on record also corroborates the testimony of the eye-witnesses. Surender Kumar, SI had noticed an injury on the hand of A-2. PW.1 Dr. P.N. Gupta, examined A-2 on 24.12.1989 and found a reddish contusion 5 cm x 2 cm in size on the unla aspect of right hand (inner) and in his opinion, possibility of the aforesaid injury been caused due to pulling of bed sheet could not be ruled out. The post-mortem report of deceased Bhanwar Singh show; that there was a ligature mark encircling whole of neck measuring 39 cms. all rounds the neck. The doctors who conducted the post-mortem examination clearly opined that the death occurred due to asphyxia caused by strangulation. Thus, the eye-witness account finds complete corroboration from thus medical evidence on record.

The accused have lead no evidence in support of their defence. Even otherwise, the plea taken by them in their statement under Section 313 Cr.P.C. appears to be highly improbable and unnatural. It has come in evidence that the distance of the garage is 14.70 meters from the front gate which comes to nearly 48 ft. It does not appeal to reason that if the actual commission of crime, namely, strangulation of the deceased had not been seen by anyone, why would the assailants take the risk of being seen and apprehended while carrying the dead body and placing it in the garage. The assailants would have left the body where the crime was committed and would have slipped away. Therefore, the defence case that some one else placed the dead body in the garage of the kothi is not at all worthy of belief. To our mind, such a defence has been taken by the accused only for the purpose of explaining the presence of the body of deceased Bhanwar

Singh in the garage and the arrest of A-2 and A-3 on the spot. It is important to note that much less producing any evidence, the accused-appellants have not even given any suggestion in the cross-examination of the eye-witnesses (PW.4 and PW.5) as to why they had given false statement to implicate them in a serious case like murder. There is not even an iota of evidence on the record which may even remotely suggest that PW.4 or PW.5 had any grouse against the appellants or any cause ;o implicate them falsely. In our opinion the evidence on record clearly establishes the case of the prosecution against the appellants beyond any shadow of doubt.

Shri Sushil Kumar, learned Senior Advocate has strenuously urged that the injury found on the body of the deceased could not have been caused in a manner deposed to by the eye-witnesses and thus there is a conflict between the medical evidence and ocular testimony. At the time when the statement of PW.2 Dr. G. Dewan was recorded, the chadar was produced in Court and the same was converted into a rope by twisting and according to the witness, the thickness of the same in the middle was about 6/7 cms. Learned counsel has submitted that the ligature mark on the neck of the deceased was 1/2 cm in width and this was not possible from a chadar, the thickness of which after twisting and converting into a rope came to about 6/7 cms. We are unable to accept the submission made. It has come in evidence that the chadar was about 1-1/2 meter long and 1 meter wide. This shows that in fact it was not a full chadar or a bed sheet but was a piece of cloth, which is sometimes used by ordinary people like rickshaw pullers to cover their face during winters especially in night. If the said piece of cloth is converted into a rope by rolling it over, its diameter will very much depend upon the fact as to how strongly and tightly it is rolled over. If a piece of cloth which is only one meter in width is tightly rolled over in the shape of a rope, its diameter will be much less than 6/7 cms. and the ligature mark on the neck of the deceased would be of still lesser dimension.

In Modi's Medical Jurisprudence (Twenty-Second Edition) in the Chapter "Deaths From Asphyxia" while dealing with the topic of "Post-mortem Appearance" especially regarding "Ligature Mark", the learned author-has stated as under on page 263:

"Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of the ligature, usually situated low down in the neck below the thyroid cartilage, and encircling the neck horizontally and completely.

The pattern of the ligature may also be seen. Very often, there are abrasions and ecchymoses in the skin adjacent to the marks. In some cases, the mark in the neck may not be present at all, or may be very slight, if the ligature used is soft and yielding like a stocking or scarf, and if it is removed soon after death....."

In the present case, the cotton cloth used for strangulating was removed immediately as the witnesses reached the spot and caught hold of the assailants. In such circumstances the width of the ligature mark could be much smaller and need not tally with the diameter of the rope.

The conflict between oral testimony and medical evidence can be of varied dimensions and shapes. There may be a case where there is total absence of injuries which are normally caused by a particular weapon. There is another category where though the injuries found on the victim are of the type which are possible by the weapon of assault, but the size and dimension of the injuries do not exactly tally with the size and dimension of the weapon. The third category can be where the injuries found on the victim are such which are normally caused by the weapon of assault but they are not found on that portion of the body where they are deposed to have been caused by the eye-witnesses. The same kind of inference cannot be drawn in the three categories of apparent conflict in oral and medical evidence enumerated above. In the first category t may legitimately be inferred that the oral evidence regarding assault having been made from a particular

weapon is not truthful. However, in the second and third category no such inference can straightway be drawn. The manner and method of assault, the position of the victim, the resistance offered by him, the opportunity available to the witnesses to see the occurrence like their distance, presence of light and many other similar factors will have to be taken into consideration in judging the reliability of ocular testimony.

The width of the ligature mark would very much depend upon the type of the cloth, how tightly and strongly it was rolled over and was converted into a rope and how soon it was removed. In *Punjab Singh v. State of Haryana* [1984] Supp SCC 233 it was held that if direct evidence is satisfactory and reliable, the same cannot be rejected on hypothetical medical evidence. Again in *Anil Rai v. State of Bihar* [2001] 7 SCC 318 it was held that if medical evidence when properly read shows two alternative possibilities but not any inconsistency, the one consistent with the reliable and satisfactory statements of the eye-witnesses has to be accepted. We are in respectful agreement with the view taken in the above cases. We are, therefore, clearly of the opinion that in the case in hand there is no inconsistency between the testimony of the eye-witnesses and the medical evidence and the case of the prosecution does not suffer from any infirmity on that account.

Shri Sushil Kumar has drawn our attention to certain findings recorded by the learned Sessions Judge and has urged that he had rightly given benefit of doubt to the appellants and the High Court committed manifest error of law in reversing the aforesaid findings and convicting and sentencing the appellants while hearing an appeal against acquittal. The learned counsel has urged that the prosecution has failed to prove any motive on the part of the appellants to commit the crime. It is true that the only witness examined on the point of motive namely PW.7 Sardara Singh, who is brother of the deceased, turned hostile and did not support the prosecution case. In his statement under Section 161 Cr.P.C. he had said that the deceased used to get commission for bringing customers to the guest house and he owed about Rs. 42,000 in that account and some dispute had taken place with the owner when he had demanded his money. However, in his statement in Court he denied to have given any such statement. There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved. In *State of Himachal Pradesh v. Jeet Singh*, [1999] 4 SCC 370 it was held that no doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no offence was committed if the prosecution failed to prove the precise motive of the accused to commit it, as it is almost an impossibility for the prosecution to unveil the full dimension of the mental disposition of an offender towards the person whom he offended. In *Nathuni Yadav and Ors. v. State of Bihar and Anr.*, [1998] 9 SCC 238 it was held that motive for doing a criminal act is generally a difficult area of prosecution as one cannot normally see into the mind of another. Motive is the emotion which impels a man to do a particular act and such impelling cause need not necessarily be proportionately grave to do grave crimes. It was further held that many a murders have been committed without any known or prominent motive and it is quite possible that the aforesaid impelling factor would remain undiscoverable. In our opinion, in the facts and circumstances of the case, the absence of any evidence on the point of motive cannot have any such impact so as to discard the other reliable evidence available on record which unerringly establishes the guilt of the accused.

Learned counsel has also submitted that the roster of duty of PW.4 and PW.5 was withheld by the prosecution and, therefore, it is not possible to accept their version that they were on patrol duty. In our opinion, the contention raised has hardly any merit in view of the fact that an entry

was made at 9.40 p.m. on 23.12.1989 in DDR No. 45 of Police Post Sector 36 to the effect that the aforesaid Constables had been assigned night patrol duty in Sector 35. The other submission made is that in the first telephonic message given to the police post at 1.05 a.m. the names of the assailants were not mentioned. It is true that Ex. PL which is copy of entry made at 1.05 a.m. in DDR No. 52 of Police Post Sector 36, the names of the assailants were not mentioned and only the fact that three persons were assaulting a person was recorded. PW. 4 has stated that he gave telephonic message about the incident at Police Post Sector 36 and made a request for sending some police force. The entry in DDR was made by Surender Kumar, SI that after receiving the aforesaid information he is proceeding to the spot along with some other police constables. This was not a First Information Report of the incident but merely an entry made regarding the departure of the police personnel to the place of occurrence and, therefore, the non-mention of the names of the assailants in this entry cannot have any bearing. The third submission of learned counsel is that having regard to the height of rear wall and fencing A-1 could not have managed to run away by scaling the same and the prosecution case in that regard cannot be believed. PW.3 Jaswant Singh, draftsman has stated that the lock boundary wall was 3 feet and 7-1/2 inch high and, thereafter, there was a barred wire fence which was 1-1/2 meter in height. While running away it is quite possible that A-1 jumped to the other side by merely scaling over the brick wall without scaling the barred wire fencing. He was a young man of 25 years in age and scaling over the wall was not a difficult proposition for him.

Shri M.N. Rao, learned Senior Advocate, who appeared for A-2 and A-3 also raised the same contentions regarding the alleged conflict in oral and medical evidence, the non-mention of the names of the accused in the first telephonic message and absence of motive, which we have already considered.

Having given our careful consideration to the submissions made by learned counsel for the parties, we are clearly of the opinion that the prosecution has succeeded in establishing its case against the accused-appellants beyond any shadow of doubt and the view taken by the learned Sessions Judge was wholly perverse which was rightly set aside by the High Court. In the result, the appeals lack merit and are hereby dismissed. The appellants are on bail. They shall surrender forthwith to undergo the sentences imposed upon them. The CJM concerned shall take immediate steps to take the appellants into custody.