

**Chander Shekhar Vs. State**

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**Court :** Delhi

**Decided On :** May-13-1988

**Reported in :** 1988(2)Crimes834; 35(1988)DLT21; 1989(16)DRJ14

**Judge :** Charanjit Talwar and; M.K. Chawla, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 76 of 1984

**Appellant :** Chander Shekhar

**Respondent :** State

**Advocate for Pet/Ap. :** N.L. Kakkar and; Usha Kumari, Advs

**Judgement :**

**M.K. Chawla, J.**

(1) Shri Ravish Khanna and his father Rajinder Nath Khanna are the residents of Moradabad (U.P.). They were running their business in the name and style of Sunbeam Exports at Railway Road, Moradabad. In connection with their business, they used to visit Delhi quite often. They had taken flat No. 22, Sunder Nagar Market, New Delhi, on rent for their stay during their business visits. They had engaged Shri Nathu, aged about 35/40 years as the servant for their Delhi establishment. He was Caretaker of the flat in their absence.

(2) On 31st May, 1982, Ravish Khanna came to Delhi at about 8 P.M. and found the outer/staircase door locked. He searched for his servant Nathu. He also made enquiries from the neighbours who informed him that they had not seen Nathu for the last 4/5 days. Consequently, he telephoned his father at Moradabad to enquire about the keys of the flat. Rajinder Nath Khanna informed that the keys were left with Nathu and he (Ravish Khanna) should search for Nathu. In case he is not found Ravish should break open the lock. On being informed about the missing of Nathu, Rajinder Nath Khanna left for Delhi.

(3) After waiting for sometime and finding no alternative. Ravish Khanna broke open the lock and went upstairs. He found the lights of the staircase and the drawing room on. The cooler was also on but running dry. Foul smell was emitting from the bedroom side. When he entered the side room near the entrance, he saw the dead body lying on the floor in decomposed condition. He immediately came down stairs and went to his sister's house at 33, Sunder Nagar, and informed the flying squad that one dead body was lying in his flat. After sometime, the local police reached there, S.I. Vishnu Madan was on patrol duty in the area of Kaka Nagar and Sunder Nagar. During the patrolling he came to know that a murder had been committed at a flat in Sunder Nagar Market. He straight-away reached the spot where S.I. Kanti Singh, Constable Balvinder Singh and Ravish Kumar were already present. In the meantime, the S.H.O., the A.C.P. and the D.C.P. of the area also reached there. Vishnu Madan was ordered to complete the investigation. On examination of the dead body, he found stab wounds on the chest and due to decomposition insects were crawling over it. At that time. Ravish Khanna handed over a written report (Ex. Public Witness 14/A) to the Police. The Sub-Inspector made the endorsement underneath and sent the same to the Police Station for the registration of the case, on the basis of which Fir Ex. Public Witness 9/A under Section 302 Indian Penal Code was recorded.

(4) On receipt of the report and the copy of the Fir, the Sub Inspector started the investigation. He prepared the site plan Public Witness 2 I/A. He also took into possession a shirt lying in the drawing-cum-dining room with a driving license in the name of Chander Shekhar in its pocket. The driving license was separately sealed vide Memo. Ex. Public Witness 7/B. He also collected, recovered and took

into possession the burnt butts of bidis and cigarettes from the ashtray, vide memo. Ex. Public Witness I/C & D. Empty bottles of liquor were taken into possession and separately sealed. A pair of chappals of green colour lying near the dead body were also sealed. Thereafter, the Sub Inspector lifted the blood stains from near the dead body and put them in separate phials. Certain papers pertaining to the allotment of a D.D.A. flat at Rohini and the receipt of deposit of Installment by Nathu were found lying in the kitchen and taken into possession vide memo. Ex. Public Witness 21/B. At that point of time. Ravish Khanna produced the lock of brass which was found on the outer door and had been broken open by him. It was converted into a sealed parcel and taken into possession vide memo. Ex. Public Witness 7/A. After preparation of the death summary report and the Inquest proceedings the dead body was sent to A.I.I.M.S. for post-mortem examination through Constable Puran Chand and Madan Lal.

(5) Vishnu Madan then started the search for the accused whose driving license had been recovered from the said flat. He came to know that Chander Shekbar had gone to his village. On the next day, the investigation was taken over by Inspector O.P. Yadav, S.H.O. of Police Station Hazrat Nizamuddin. On 8th June, 1982, at about 3-15 P.M., the S.H.O. received secret information that the accused would be coming from the Ashoka Road side to visit his in-laws living near the Old Nursing Hostel at Jaswant Singh Road. A nakabandi was held and on the pointing of the informer, the accused was arrested, at the crossing of Ashoka Road and Jaswant Singh Road. From his personal search, nothing was recovered. He was brought to the Police station and interrogated. During interrogation, and in the presence of Kanhaiya Lal, the accused disclosed that he could get the knife and bunch of keys recovered which he had concealed near the electric pole, situated near the place of occurrence. His disclosure statement Ex. Public Witness 12/A was recorded which was signed by the witnesses. The accused then led the Police party to the electric pole near house No. 22, Sunder Nagar Market and pulled out the blood-stained dagger and the bunch of keys, by putting his hand in the hollow space in the electric pole. The Investigating Officer prepared the sketch of the dagger. Ex. Public Witness 12/A and after sealing it, took it into possession vide memo. Ex. Public Witness 12/C. The bunch of keys were separately sealed.

(6) During interrogation, it was revealed that one Smt. Rosy resident of 95/D-II flats, Kaka Nagar, New Delhi, Along with Virender Singh had gone to the flat of the deceased for preparing dinner on 25-5-82, the date on which the incident of murder occurred. The dinner was being hosted by Nathu in honour of a Nepali friend. On the said date, after sometime of Rosy's arrival, accused Chander Shekhar Along with two daughters of Rosy also reached the flat. He Along with Nathu consumed quite a bit of liquor. After taking dinner. Rosy, her two daughters and Virender left for their respective houses leaving behind the accused and the deceased.

(7) After collecting the M.L.C. and the reports from the office of C.F.S.L., the I.O. completed the investigation, and submitted the challan against the accused for this offence of murder of Nathu.

(8) The accused denied the allegations of the prosecution in toto and place alleged by the prosecution. According to him, he was arrested and the shirt and the driving license were taken into possession by the police from his native village. It is his case that the dagger and the keys were planted on him. He further took the stand that he has been falsely implicated at the instance of Rosy who was a woman of easy virtue. She in fact wanted him to marry her daughter to which proposal he was not agreeable because of the bad antecedents of Rosy, who had already divorced two husbands and was living with a third one. She was also having illicit relations with the deceased.

(9) In order to prove the case, the prosecution examined as many as 22 witnesses. Since there was no direct evidence in the form of eye-witness account, the entire case rested on the circumstantial evidence. Learned lower court believed Public Witness 5, Rosy and Public Witness 11 Virender Singh alias Babli, witnesses who had last seen the accused with the deceased. Reliance was placed on the recovery of the weapon of offence and bunch of keys which operated the lock found on the outer door of the flat. Support was also sought from the recovery of the blood-stained bush-shirt and the driving license of the accused which were found lying in the drawing-cum-dining room of the flat. On these facts and the surrounding circumstances, the learned lower court came to the

conclusion that the prosecution has been able to complete the chain of events, leaving no ground for a conclusion consistent with the innocence of the accused. He was convicted for the offence charged with and sentenced to undergo rigorous imprisonment for life. In this appeal, Chander Shekhar has challenged the correctness of the order of conviction and sentence.

(10) It is well established principle of law that in a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and convincing, and they should be such as to exclude every hypothesis but the one proposed to be proved, in other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probabilities, the act must have been done by the accused.

(11) Relying on the settled propositions, the submission of the learned counsel for the appellant is that the prosecution has not led any convincing evidence of the accused having been last seen in the company of the deceased. The recovery of the dagger i.e. the weapon of offence and the recovery of the bush-shirt and the driving license from the place where the murder took place is also challenged. Besides that, it is argued that the prosecution has not proved the arrest of the accused on the date, time and place as alleged by the prosecution. According to the learned counsel, the prosecution has miserably failed to complete the chain of circumstances pointing an accusing finger towards the accused,

(12) In this case, the prosecution mainly relies upon the evidence of Pw 5, Rosy and Public Witness 11 Virender Singh alias Babli, who had gone to the house of the deceased and took dinner there on the night of the occurrence. Rosy has given in minute details the events which had taken place at the flat of Nathu on the night of 25th May, 1982. According to her, Nathu (deceased) used to live in the neighborhood of her parents in Kaka Nagar before shifting to the flat in Sunder Nagar and as such she knew him from before. She was also on visiting terms with him. On 25th May, 1982, at the request of Nathu, she had agreed to prepare

Chinese food for one of his friends who was going to Nepal. At about 6.30 p.m , she Along with Babli, who had also been invited by Nathu, reached the flat. Nathu and his Nepali friend were found taking liquor in the drawing room. Rosy straight-away went to the kitchen and prepared the food and served it to them at the dining table. At about that time, the accused with two daughters of Rosy reached there. Chander Shekhar was also served with liquor. After sometime, Chander Shekhar wanted more liquor. Nathu asked him to purchase the same from the market and offered some money by taking out a bundle of currency notes of Rs. 100.00 denomination. Rosy at that time prevented Nathu from giving money as the same was meant to be paid towards the Installment of purchase of flat by Nathu. Nathu kept back the said amount. After taking food, Nepali friend of Nathu, left, leaving behind all others. Few minutes, later, Rosy Along with her two daughters and Babli also left for their respective houses leaving behind the accused and Nathu. She further stated that thereafter Nathu did not come to her house. After 2/3 days she had gone to the flat but found the same locked. It was only on 1-6-1982, when she went to fetch milk from the Mother Dairy depot that she heard people talking about the murder having been committed in the said flat. She immediately went to the flat where her statement was recorded by the Police.

(13) Almost similar is the evidence of Virender alias Babli. Learned counsel for the appellant tried to demolish the evidence of these two witnesses on the ground that Rosy and Virender are persons of shady character and therefore a convenient witness for the Police. In her cross-examination Rosy admitted having married twice before settling with Hassan Shahid Khan, presently working in Abu Dhabi. According to the learned counsel, both these witnesses failed to identify the deceased and the clothes which he was wearing on the night of 25-5-1982. Their evidence, thus, is unreliable.

(14) It is true that Smt. Rosy had married thrice and was known to the deceased from before, but at the same breath, she admitted her closeness with accused, inasmuch as her children used to visit him quite often. She, however, denied suggestion that she wanted accused Chander Shekhar to leave his own wife and marry her eldest daughter. There is no worthwhile cross- examination to shake the credit of these witnesses, insofar as the evidence of the accused being left in

the company of the deceased on the night of 25th May, 1982. None of the witnesses had any enmity or animus against the accused even if it be assumed that they were friendly with the deceased. There is not even a whisper of suggestion that the accused did not come to the flat with the daughters of Rosy or that he had not taken liquor. From the evidence of these two witnesses, it can safely be held that the accused and the deceased remained behind in the flat and were last seen together there on the night of 25th May, 1982.

(15) On 31st May, 1982, Public Witness Ravish Khanna was the first to inform the Police Control Room that a dead body was lying in the side room of his flat. On reaching the flat, the 1.0. found the lights of the stairs were on and the desert cooler running dry. It was perhaps because of the running of the desert cooler that the foul smell of the dead body could not emit out of the house so prominently as to attract the attention of the neighbours after one or two days of the murder. Thereafter, the Investigating Officer took into possession the various articles from the spot, including the bloodstained bush shirt containing the driving license of the accused lying in the drawing room. Learned counsel for the appellant pointed out that in the First Information Report, there is no mention of the fact of the recovery of the articles found lying at the spot. The story of recovery of the bush shirt and the driving license of the accused is a concocted one and has been fabricated in order to rope in the accused.

(16) The prosecution in our opinion has fairly explained the first discrepancy by alleging that the 1.0. did not record the statement of Ravish Khanna in his own hand, but only made the endorsement, on the writing given by Ravish Khanna narrating the circumstances under which he discovered the dead body. On the basis of this writing that the First Information Report was based. It was thereafter that the 1.0. moved in the matter and proceeded to prepare the memos for the recovery of the various articles found lying at the spot. This, to our mind was the right procedure adopted by the 1.0. On almost all the recoveries. Ravish Khanna whose presence at the spot cannot be disputed, is the attesting witness. His independent testimony with regard to the recovery of the articles, including the bush shirt containing the driving license with the photo of the accused on it cannot be doubted. On the driving license, the address of the accused was that of Delhi,

and it was near his residence where the Police kept a watch and ultimately arrested him. The recovery of the empty bottles of whiskey and cigarette butts further lend credence to the evidence of Public Witness 5 Rosy and Public Witness 11 Virender Singh, that the accused in the company of the deceased had taken liquor on the fateful night. Since he had come late, when others were about to start dinner, there was all the more reason for him to stay back for taking liquor and dinner.

(17) The recovery of the dagger i.e. weapon of offence Along with the keys is another material circumstance with which the prosecution has been able to complete the chain of circumstances. After the arrest of the accused near the crossing of Jaswant Singh Road and Ashoka Road, he was brought by Inspector, Public Witness 22, O.P. Yadav, to the Police Station for interrogation. According to the Inspector, the accused, in the presence of Pw I, S.I. Vishnu Madan and Public Witness 12, Kanhaiya Lal, made a disclosure statement that he could get the keys and the dagger recovered which he had concealed in the hollow space of the electric pole situated near the flat. This fact was recorded in the form of a statement Ex. Public Witness 12/A. According to the I.O., the accused then led the Police party to the electric pole bearing No. 86, near Sunder Nagar Market and took out the blood stained dagger and the bunch of keys concealed therein. These articles were separately sealed and taken into possession.

(18) The submission of the learned counsel for the appellant is that Kanhaiya Lal, the only public witness has turned hostile, insofar as the actual recovery of these articles in his presence is concerned. Thus, no reliance can be placed on the so-called disclosure of the accused and the consequent recovery. There is no denial of the fact that Kanhaiya Lal had tried to help the accused by stating that the articles were already with the Police when the disclosure statement of the accused was recorded. It is only for that reason Kanhaiya Lal was allowed to be cross-examined by the prosecution. The disclosure as well as the recovery memos. also bear the signature of Inspector O.P. Yadav and Sub-Inspector Vishnu Madan. In the absence of the corroboration from an independent quarter, the evidence of the Police official has to be looked into with care and caution. Merely because they are Police official their testimony cannot be ignored. The fact remains that the accused



did make the disclosure statement in the presence of Kanhaiya Lal as a consequence of which articles were recovered, from a place which could only be known to the accused and not else. Learned counsel for the accused could not point out any discrepancy or any inconsistency in the evidence of any of the Police officers to term them as false witnesses. Their evidence in fact inspires confidence. We have, therefore, no hesitation to accept the prosecution version that the dagger and the keys of the lock which were found on the door of the flat were recovered at the instance of the accused.

(19) The contention of the learned counsel for the appellant is that even if the recovery of the bush shirt of the accused, his driving license and the dagger be held to have been taken possession of from the places mentioned in the recovery memos, even then the recoveries will not connect the accused with the commission of the offence. According to him, the dagger was recovered after 15 days of the occurrence and there was no possibility of any blood-stains being present on it, particularly, when the remaining articles namely, the baniyan and pant of the deceased having blood stains on it gave no positive reaction. The submission is that even if there was some blood on the dagger, it could not have been analysed as is shown in the report of C.F.S.L.

(20) We have already observed that the recovery of the bush shirt the driving license from the flat in question and the dagger and the keys at the instance of the accused is genuine. These articles besides others were immediately deposited in the Malkhana and sent to the office of the C.F.S.L. report. In due course of time, the reports Public Witness I/E to Public Witness I/H were received. The result of the analysis shows that even though the bush shirt of the accused had blood stains, but it gave no reaction. No blood group could be detected on it. The dagger was, however, found to contain human blood of 'A' group. It may be that due to the nature of the surface on which the blood stuck gave a positive result on the dagger and no reaction on the other articles. reports of the C.F.S.L. are not under challenge and there was no occasion for the prosecution to obtain the favorable results. Had there been any attempt on the part of the I.O. to falsely implicate the accused, they too could have easily manipulated the blood on the bush shirt to be that of the 'A' group.

(21) Further more, according to the post-mortem report, there were corresponding cuts on the clothing on the deceased and in the opinion of the doctor these cuts were caused by the dagger. In fact, all the four injuries have been opined to have been caused by the same dagger, recovered at the instance of the accused. The reports of the post-mortem, the opinion of the doctor and the Chemical analysis on the dagger prove beyond doubt that it was this very dagger which was used as a weapon of offence resulting in the death of Nathu.

(22) In such like cases, it is not necessary that the prosecution must always prove a strong motive to commit the crime, as grave as that of murder. In very many cases, heinous crimes are committed even without motive and sometimes for trivial motive. However, in this case, the prosecution has led a convincing evidence to prove the motive of the accused which was to deprive Nathu of his money by robbing him. In the evidence of Public Witness 5 Rosy and Pw 11 Virender, it has come on record that the deceased was having a bundle of currency notes of Rs. 100.00 denomination which were more than Rs. 1500.00 . He had taken out this bundle from his pocket when the accused demanded more liquor. On the asking of Rosy, the deceased kept the money back as the same was meant for making payment of Installment of his D.D.A. flat. After sometime, every body left leaving behind the accused and the deceased alone in the flat. It appears that the accused did not intentionally leave the flat Along with others because he had an evil eye over the money. When the dead body was recovered, this bundle of notes was found missing. Obviously, the amount could not be recovered from the accused as he was arrested after 15 days of the occurrence but the fact remains that the deceased had already consumed considerable amount of liquor while the accused had reached late and was deprived of more liquor at the instance of Rosy. There are marks of struggle in the shape of torn collar of the bush shirt of the deceased. It could only be at the time when the accused tried to overpower the deceased and to deprive him of his money. The prosecution has succeeded in proving the motive of the accused in committing the murder.

(23) As a last resort, the learned counsel for the appellant tried to throw doubt on the identity of the deceased. His submission is that nobody has identified the dead

body as that of Nathu inasmuch as after the postmortem, the body was handed over to the Sewa Smiti people for cremation. This is not so. On 1-6-1982, Public Witness 5 Rosy on coming to know of the murder, having been committed in flat no. 22, Sunder Nagar and straightway went to the spot where her statement was recorded. On the next day, she was summoned to police station Hazrat Nizamuddin and then taken to AIIMS. There she identified the dead body of Nathu. At that time, one red baniyan, one brown coloured bush shirt and one blue coloured pant were on the dead body. She also identified those clothes which the deceased was wearing on 25-5-1982. Similar is the evidence of Public Witness 11 Virender. He had also noticed that on the night of 25-5-82, Nathu deceased was wearing a red coloured baniyan, a dark brown bush shirt, and a blue coloured pant. According to him, he had given that very red coloured baniyan to Nathu. He also identified these clothes while in the witness box. Ravish Kumar Khanna in the first instance, could not identify the dead body from its face as it was totally decomposed, but at the same time he identified Nathu from the blue coloured pant and the striped T-shirt which he used to wear normally. There is no worthwhile cross-examination on any of these witnesses on this aspect. In fact, there is not even a suggestion. This contention, therefore, has no substance.

(24) In view of the conclusive nature of the circumstances discussed above, we are left in no doubt that the prosecution has been successful in proving the chain of evidence so far complete that in all probability, the accused has committed the murder of Nathu.

(25) In the result, we do not find any substance in the appeal, which is hereby dismissed.