

Lala Ram Vs. State

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Court : Delhi

Decided On : Dec-13-2007

Reported in : 2008(100)DRJ129

Judge : Mukul Mudgal and; P.K. Bhasin, JJ.

Acts : Evidence Act - Sections 114 and 161; Indian Penal Code (IPC) - Sections 34, 302, 394, 399, 411 and 412; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. Appeal No. 553/2004

Appellant : Lala Ram

Respondent : State

Advocate for Def. : Sunil Sharma, APP

Advocate for Pet/Ap. : Sameer Chandra, Adv

Disposition : Appeal allowed

Judgement :

Mukul Mudgal, J.

1. This appeal challenges the judgment dated 22nd March 2004 and the order on the point of the sentence dated 25th March 2004 passed by the learned Additional

Sessions Judge, Delhi, in SC No. 7/2000 arising out of FIR No. 585/99, in Police Station Pashchim Vihar, by which the appellant was sentenced to five years rigorous imprisonment and a fine of Rs. 1000/-, in default of fine to further undergo rigorous imprisonment for a period of one year under Section 394 IPC and was further sentenced to rigorous imprisonment for life and a fine of Rs. 3000/- in default of which he was required to undergo rigorous imprisonment for three years under Section 302 IPC. Both the sentences were to run concurrently.

2. The brief facts of the case as set up by the prosecution are as follows:

(a) On 22nd June 1999, police Station Paschim Vihar received an information from PCR that a murder was committed in house No. 137, 1st Floor, Ambika Vihar, Paschim Vihar, Delhi (hereinafter referred to as the 'said premises' and the informant was one Mr. Dalip Juneja. After the information was received and recorded at Sl. No. 35-B in DD register and the copy of the same was entrusted to SI Rajinder Singh, he along with a constable reached on the spot. In the meantime, additional SHO Inspector Abhay Singh, and SI Ghanshyam along with constable Rakam Singh, also reached the spot.

(b) Inspector Abhay Singh inspected the spot and found Smt. Pushpa Grover, (since deceased) lying dead near the bed room. One pillow and one towel were found lying near the dead body and the household article were also found scattered all over.

(c) The Inspector recorded the statement of Sanjay Grover, son of the deceased Pushpa Grover on which an endorsement was made and a case under Section 394/302 IPC was registered. Sanjay Grover deposed as under:

(i) Sanjay Grover, his wife Aanchal Grover and his mother deceased Pushpa Grover used to live in the said premises as tenants. Sanjay Grover was running a boutique under the name and style of Kashish in Jawalaheri market, and used to go to the boutique daily at 10:00 am and return home at 8:00 pm and during their absence, the deceased Pushpa Grover used live alone in the house. Sanjay Grover and his wife Aanchal used to get lunch from the house through the servant Sartaj.

(ii) On the day of the incident, their servant Sartaj had brought the lunch at about 1:30 pm and at that time his mother was alone in the house. At about 6:00 pm Sartaj was sent again to the house to inquire whether the brother in law of Sanjay Grover, Dinesh Taneja, whose arrival was expected in the house, had arrived. After sometime, his servant informed him on the telephone that something had happened to his mother and on reaching home Sanjay Grover found his mother lying dead.

(iii) The gold bangles which his mother was wearing were missing and the household articles were lying scattered around.

(d) On 29th June 1999, the accused Lala Ram was arrested from the bus-stop of Madhipur Village in the presence of Sanjay Grover and his servant Shamshad who was working at his Boutique. Accused Lala Ram while in custody made a disclosure statement and admitted that he along with Abrar Ahmed @ Pappu and Vakil Ahmed had committed the murder of Pushpa Grover and after killing her had removed gold karas, pearl, necklace and ear tops from the body of Pushpa Grover and had also stolen Rs. 4,000/- which were kept in a purse in almirah. Pursuant to the disclosure statement, the accused Lala Ram led the police party and Sanjay Grover to his house and got recovered a pair of ear tops and the pearl necklace.

(e) On 29th September 1999, information was received at Police Station from CA staff, Punjab on telephone that co-accused Abrar Ahmed was arrested on 28th September, 1999 in FIR No. 101/99 under Section 399/411/412 IPC who while in custody had made a disclosure statement about this case also. On 8th October, 1999, the co-accused Abrar Ahmed was produced in the Court of Chief Metropolitan Magistrate, thereafter he was interrogated and he made a disclosure statement.

(f) Another co-accused Vakil Ahmed was arrested on 12th October, 1999 at the New Delhi railway station after being pointed out by Abrar Ahmed. While in custody, Vakil Ahmed also made a disclosure statement and in pursuance to the disclosure statement Vakil Ahmed got recovered two gold karas from Taand in a room in House No. F-566, Madhipur. The Test Identification Parade (TIP) of the gold chain recovered from Abrar Ahmed and two gold karas recovered from Vakil

Ahmed were conducted and after completion of investigation the supplementary challan was filed against the co accused Abrar Ahmed and Vakil Ahmed and was clubbed with the main case.

(g) The charges under Sections 394/302/34 of the IPC were framed against all the three accused persons to which they pleaded not guilty and claimed trial.

(h) The prosecution examined 25 witnesses in support of its case. The principal witnesses being PW1 Sanjay Grover, son of the deceased Pushpa Grover, PW7 Dinesh Juneja, brother-in-law of Sanjay Grover and PW12 Sartaj, servant of Sanjay Grover.

3. It is significant to record the stand taken by the appellant/accused in his statement under Section 313 Cr.P.C., which is noticed by the trial court as under:

Accused Lala Ram in his statement recorded under Section 313 Cr.P.C. denied all the allegations and stated that on 27.6.99 he was returning from Multan Nagar when police met him and made inquiries from him. Then he was taken to police station and was falsely implicated in this case. Accused Vakeel Ahmed in his statement recorded under Section 313 Cr.P.C. also denied all the allegations and explained that he was lifted from his native place, but he did not know why. Accused Abrar Ahmed in his statement recorded under Section 313 Cr.P.C. claimed that he was arrested by Punjab Police in a false case and thereafter he was falsely implicated in this case all the three accused persons denied that anything was recovered from them.

4. The main pleas raised on behalf of the accused Lala Ram are that the following deficiencies destroyed the substratum of the prosecution case:

(a) Finger prints were admittedly lifted from the spot and no efforts were made to either take the finger prints lifted from the spot of the incident of the accused or to match them with the finger print and in fact finger prints were not even brought on record by the prosecution.

(b) The presence of Dilip Juneja PW-2 is doubtful. It is stated that the telephone call was received by PW-1 Sanjay Grover at 3:00 pm from his servant Sartaj Ali.

PW-2 Dilip Juneja stated that he went to the spot of incident at 2.30/2.45 PM and had stayed there for 10 minutes and while leaving saw at the front gate the three boys who were eventually found to be the accused. The medical evidence indicates to the death occurring at about 3.15 PM as pointed out by the learned Counsel for the prosecution. PW-12 Sartaj Ali clearly deposed that after bringing the lunch he again visited the house of PW1 at 3.00 pm to enquire the whereabouts of the brother-in-law of PW1, Dinesh Taneja, who was to visit the house of PW-1 before proceeding to Allahabad. PW-12 further deposed that when he entered the house of the PW1, he saw the deceased Pushpa Grover lying on the bed and her mother was covered with a pillow. He came out of the house in order to make a call from the local STD booth to Sanjay Grover/PW-1. It is submitted that in the whole incident of killing, the accused would not have taken less than 15 minutes, as the goods are alleged to have been removed from Almirah after ransacking it too. It is not the case of the prosecution that the accused had ever visited the residence of the deceased earlier and thus being unfamiliar with the residence of PW-1, the accused could not have taken less than 15 minutes to accomplish what is attributed to them by the prosecution. PW2's testimony that he was present at PW 1's residence from 2.45 pm for another 10 minutes make it very unlikely that he saw the accused while leaving the place of incident and this version seems to be concocted because in such a case medical testimony reveals that he ought to have witnessed the incident as Sartaj Ali PW-12 reached there at 3.00 pm and discovered the dead body. It is thus submitted that the prosecution's case particularly qua Dalip Juneja is wholly unworthy of belief because it is contradicted clearly by the evidence of Sartaj Ali PW-12 who deposed about being present on the said premises at 3.00 pm. Further he was sent home by his employer Sanjay Grover PW 1. PW 12 is a prosecution witness who has not been declared hostile and whose evidence was implicitly relied upon by the prosecution. Further doubt has been thrown about the veracity of Dalip Juneja's statement because according to him when he left his mother-in-law at 3:00 pm, she was having her lunch. When the lunch was made and sent to PW-1 at 1.30 PM, it is very odd that somebody in the house would be having lunch at 3.00 PM. Even if it is admitted that she was having lunch at 3.00 pm and was alleged to have been killed around that time then the fact that the post mortem

report states that there was semi-digested food which takes 3 to 4 hours to reach that state of digestion clearly shows the gaping holes in the testimony of PW-2 Dilip Juneja. The scientific evidence of presence of semi-digested food indicates that the murder would not have taken place at around 3.00 pm whereas according to PW2 Dilip Juneja's testimony the deceased was having her lunch when he left at around 3.00 pm.

It is also submitted that sending of the servant Sartaj Ali for a second time to enquire about the presence of other brother in law in the house is extremely odd, because the said PW-1 in his examination-in-chief has admitted that call was made from the telephone of his house though this is later refuted in the cross-examination. PW1 had deposed that:

I sent my servant Sartaj to my house and he was directed to enquire at my above house that my brother-in-law Dinesh Juneja who used to come on my above house, if he came there or not. My servant telephoned me from my house to my shop and told me on the telephone that something had been happened to my mother and she is not in position to speak and he also asked me to telephone to come home as soon as possible.

On being cross-examined by counsel for the accused Lala Ram, PW1 deposed:

We had no telephone at our house during that time. It is incorrect to suggest that I used to have telephone at my residence at the time of incident.

It is also submitted that it is extremely odd that the some one living in an accommodation in a well to do locality and owning a car and a boutique would not have a telephone in the year 1999.

(c) Since it is not disputed that the recovery pursuant to the disclosure took place at a crowded locality, in the absence of any testimony from the police that any efforts were made to get any neighbour as a witness, the fact that no neighbour was associated with the recovery makes the recovery extremely doubtful. Neither has the prosecution has given any reason nor has any witness deposed to the fact that any efforts were made to ask the neighbours to be witnesses to the recovery

and that nobody was willing to come forward. This throws considerable doubt on the veracity of the prosecution case .

(d) It is further submitted that the accused Lala Ram was admittedly shown to PW-1, Sanjay Grover, in the police station and when the TIP was conducted. The learned Counsel for the appellant pointed out in his pleas that PW-1 Sanjay Grover had not seen the accused at the spot but only claimed to have seen them coming to his boutique, and this clearly shows that the TIP, if any, should have been conducted by PW 2 Dilip Juneja who is said to have seen the accused at the relevant time, i.e., at around 3.00 pm . It is therefore submitted that this is another weakness in the prosecution case that the accused Lala Ram having not been shown to PW-2 Dalip Juneja who would have been the ideal and indeed the only person to identify the accused in TIP and who had been made to stay away and did not participate in the TIP. It is submitted that the prosecution case that the motive of the murder is non-payment of Rs. 400/- particularly in the light of the fact that it was the prosecution's case that PW-1 had assured the accused Abrar Ahmed that the payment would be made shortly, throws considerable doubt on the motive attributed to the accused. It is also submitted that the absence of the landlord who has not been examined is a significant omission particularly when PW-5 had deposed that the landlord who lived on the ground floor was present at the house of the deceased, on the day of the incident when she reached the spot. It is pointed out that the PW7 Dinesh Taneja who is the brother in law of PW-2 and would have visited the deceased later on the day of the incident, clearly stated that he was to leave for Allahabad on the same day and was to leave his family in Ambika Nagar. It is stated that he had already conveyed his plan to Dilip Juneja and had accordingly gone there at 6.30/7.00 PM, thus when Dilip Juneja knew that Dinesh Taneja was to reach at 6.30/7.00 PM, there was no occasion for him to go there at 2.45 PM to ascertain the whereabouts of the said Dinesh Taneja. It is stated that Dinesh Taneja had already told his plans to his brother-in-law Sanjay Grover that he would reach at around 6:30-7:30 pm. therefore, there was no occasion for PW 12 to be sent to PW 1's house at 2:45 pm for ascertaining the whereabouts and the arrival time of Dinesh Taneja.

5. In order to strengthen its case, that the trial court was right in convicting the appellant, the prosecution relied upon the following:

(a) Identification of the appellants

PW 1 Sanjay Grover identified the appellants as persons who approached him 22nd June 1999 and in anger left the shop when they were not paid Rs. 400/-. Likewise, PW 5 Aanchal Grover wife of the complainant also identified the convicts when they approached the complainant in their shop.

(b) Presence of appellants on spot

PW 2 Dalip Juneja, son in law of deceased visited the house of the complainant and saw the appellants entering the house while he was leaving. It is submitted that PW 7 Dinesh Juneja co-brother of PW 2 had come from Allahabad and he was to visit complainant's house and PW 2 just went there to check whether PW 7 has reached there or not and there PW 2 found the appellants present. Presence of PW 2 on spot is natural and is not something odd.

(c) Identification of Case Property

The case property was duly identified by PW 1 Sanjay Grover and PW 5 Aanchal Grover as belonging to the deceased. Though initially, PW 1 only mentioned about missing of bangles but subsequently and before the recovery of jewellery articles, he gave supplementary statement details of other missing articles.

(d) Motive

Motive can be inferred from circumstances of a case. In the instant case, when Rs. 400/- were not paid to Abrar Ahmed this enraged the convicts and in rage they rushed to complainant's house and murdered the complainant's mother and robbed her.

(e) Sequence of events

The events of the case arrest of accused, recovery of jewellery articles from the possession of convicts , identification of jewellery articles by complainant,

presence of appellants on spot as seen by PW 2 Dalip Juneja, all indicates that this case a case of robbery cum murder forming part of same transaction and the appellants were rightly convicted by the Court.

(f) The learned Counsel for the State relied upon the following judgment of the Hon'ble Supreme Court in Wasim Khan v. State of Uttar Pradesh 1956 SC 400. The relevant part of the said judgment reads as follows:

The real question is whether the evidence in the case establishes that the appellant murdered and robbed Ram Dularey. The evidence is circumstantial. Before we deal with that evidence, it is necessary to consider how far recent possession of property of a deceased, in circumstances clearly indicating that he had been murdered and robbed, would suggest that not only the possessor of the property was a thief or a receiver of stolen property, but that it also indicated that he was guilty of a more aggravated crime which had connection with the theft. In the case of *The Emperor v. Sheikh Neamatulla* [1913] 17 C.W.N. 1077. Sir Lawrence Jenkins had the occasion to examine this question. After referring to Section 114 of the Evidence Act, he quoted the following passage from *Wills on Circumstantial Evidence*:

the possession of stolen goods recently after the loss of them, may be indicative not merely of the offence of larceny, or of receiving with guilty knowledge, but of any other more aggravated crime which has been connected with theft. This particular fact of presumption commonly forms also a material element of evidence in cases of murder; which special application of it has often been emphatically recognized.

In the case of *Queen-Empress v. Sami and Anr.* I.L.R. 1890 13 Mad. 426. at page 432, the learned Judges of the High Court observed, 'Under these circumstances, and in the absence of any Explanationn, the presumption arises that any one who took part in the robbery also took part in the murder. In cases in which murder and robbery have been shown to form parts of one transaction, it has been held that recent and unexplained possession of the stolen property while it would be presumptive evidence against a prisoner on the charge of robbery would similarly be evidence against him on the charge of murder. All the facts which tell against

the appellant, especially his conduct indicating a consciousness of guilt, point equally to the conclusion that he was guilty as well of the murder as of the robbery....' In the case of Emperor v. Chintamoni Shahu : AIR1930 Cal379 , the opinion was expressed that 'the possession of stolen goods recently after the loss of them may be indicative not merely of the offence of larceny or of receiving with guilty knowledge but of any other more aggravated crime which has been connected with the theft; this particular fact of presumption forms also a material element of evidence in the case of murder'. A similar view seems to have been taken in the case of In re Guli Venkataswamy as well as in the case of Ramprasad Makundram Rajput v. The Crown .

8. In the present case it is established beyond doubt that the deceased travelled with his goods with the appellant on his bullock cart. He should have reached his destination Jarwal in the course of the night. He never got there. Obviously, he was murdered on his way home. On the appellant's own statement, he and the deceased were alone in the cart after the other two persons had got off the cart at the Sugar Mill gate. Thereafter the deceased was never seen alive by any one. He was found murdered. The appellant was found in possession of the deceased's goods three days afterwards. The appellant made no effort to trace the whereabouts of the deceased or lodge information of his disappearance from the bullock cart. The appellant has told the court that some people called the deceased while the cart was on its journey and the deceased told him to wait for him at a certain place. He waited until 4 a. m. but the deceased never turned up. This should have aroused his suspicious and he should have informed the police or someone in authority about it. He says he informed the Mukhia and all the people about it. Neither the Mukhia nor anyone has been examined by the appellant to support his story. Reliance was placed on the statement of Iftikhar Ahmad P.W. 7, who spoke of a rumour in the village that the appellant had brought the property of a man on his cart who had gone away and that this rumour had been spread by the appellant. It is clear, however, that the witness was not speaking of this from his personal knowledge and his statement is not legal evidence. On the other hand, if really the appellant had spread such a rumour there is no adequate Explanationn for his failure to inform the authorities. He knew he was in possession of a large number of articles belonging to the man who had

hired his cart but had disappeared in very strange circumstances. In addition, there is no Explanationn for his possession of a big blood-stained knife, a weapon which if used against the deceased, could have caused the injuries found on him. It is true that the blood stains were minute and have not been established to be of human blood. The appellant, however, denied that the knife belonged to him, and has not explained as to how it came to be in his possession. It is impossible to believe his story that he waited until 4 a.m. for the deceased to return. Tee cart had started from Jarwal Road Station at about 10 p.m. It could not have been more than a couple of hours later that the deceased left the cart. To wait from that time until 4 a.m. at a place not far from Jarwal itself appears to be a fantastic story. It is true that none of the clothes of the appellant were found to be blood-stained, as they should have been, if he had participated in the murder, having regard to the nature of the injuries on the deceased. These clothes were not seized until the 6th July, some three days later, and the appellant could have removed all traces of blood stains from his clothing in that time.

It was held by the Hon'ble Supreme Court in paras 7 and 8 that presumption arises that anyone who took part in the robbery also took part in the murder.

In the instant case, appellants were seen on the spot and thereafter were found in possession of robbed jewellery articles. Thus, a presumption arises under Section 114 of Evidence Act, that the appellant have not only committed robbery but have also committed murder of deceased Ms. Pushpa Grover in this case.

6. The trial court while convicting the appellant held that:

117. In the present case there is not eye-witnesses who might have seen the offence being committed and entire prosecution case depends on circumstantial evidence. The circumstantial evidence led by prosecution is three fold: (1) Motive which was available to Abrar Ahmed (2) Accused persons were seen near the place of occurrence near about the time when offence was committed. (3) The recoveries of the stolen articles which were in the house of deceased and which deceased was wearing before her death.

118. The prosecution by evidence has proved the facts enumerated above. The sole question which arises for consideration now is whether on the basis of the circumstantial evidence led by prosecution and proved facts thereby, can it be presumed that accused persons had committed murder of Pushpa Grover or not.

7. In our view, there is a vital infirmity in the prosecution case since the finger prints that were lifted from the spot were not matched with the finger prints of the accused. This throws grave doubt about the veracity of the prosecution evidence. The use of scientific methods have not been resorted to without any Explanation whatsoever quite contrary to the position of law laid down by the learned Single Judge of this Court in Abdul Subhan v. State (NCT of Delhi) : 133(2006)DLT562 which we reiterate and endorse as follows:

13.

13.7. Proper investigation of such accidents would go a long way in aiding the criminal justice system in convicting those who are guilty and acquitting those who are innocent. A shoddy investigation will only point in one direction and that is in the acquittal of all whether they are guilty or whether they are innocent. Because, no criminal court would (and ought not to) convict any person merely on the basis of conjectures, assumptions, probabilities. All elements of subjectivity need to be eliminated and the investigation should be such that, when a charge sheet is filed, the court is presented with a case which when taken objectively would lead to the inescapable conclusion that a conviction is maintainable.

The fact that finger prints were not even brought on record by the prosecution leaves us no option but to draw an adverse inference against the prosecution for not producing objective scientific evidence which could have clearly established the guilt or exonerated and demonstrated the innocence of the accused. Thus the plea of the learned Counsel for the appellant that the substratum of the prosecution's case is destroyed in the absence of such scientific evidence stands justified. The innocence or guilt of he accused would have been established conclusively if the fingerprints of the appellant had been brought on record and matched.

8. In our view, the trial court is right in holding that there is no eye-witness who saw the offence being committed and the case is built up entirely on circumstantial evidence. However, the prosecution has not been able to prove the guilt of the accused on the basis of circumstantial evidence beyond any reasonable doubt. In fact, while a conviction can undoubtedly be based upon circumstantial evidence the circumstances must be examined with due care.

9. There are certain infirmities in the case of prosecution which lead to the conclusion that the prosecution has not been able to prove its case beyond any reasonable doubt.

(i) The testimony of PW2 about sighting the accused has been found by us not to be worthy of belief. If we put together the facts, the testimony of PW2 and the post mortem report, it is apparent that timing of PW2's visit to his mother-in-law is fortuitously timed to be very proximate to the incident so as to sight the accused.

(ii) If the accused persons were sighted and talked to by PW2 near the said premises 5 minutes before the scientifically determined time of death, it is indeed doubtful why the statement under Section 161 does not make any mention of it. Besides, according to the post mortem report the death should have taken place at around 3.00 p.m. and PW2 had stated in his testimony that he had arrived at the deceased's residence at around 2.45 p.m. and stayed there for 10 minutes which renders his story of sequence of events unworthy of belief.

(iii) We are of the view that the testimony of PW 2 Dilip Juneja regarding his presence on the premises just before the murder is indeed doubtful. There could have been no reason for PW2, Dilip Juneja to visit the said premises since he could have telephoned at PW1's residence to find out whether his brother-in-law had arrived. The argument of the learned Counsel for the appellant that the prosecution's case qua Dilip Juneja is not worthy of belief, finds reaffirmation in the evidence of Sartaj Ali, PW12, who deposed about being present at the said premises at 3.00 p.m. The veracity of Dilip Juneja's statement is further doubtful since according to him his mother-in-law was having her lunch at 3.00 p.m. This is in contradiction to the post mortem report. The post mortem report clearly states that it takes about 3-4 hours for consumed food to reach the semi-digested form

that was present in the stomach of the deceased. Further, the learned Counsel for the appellant has rightly pointed out that Dilip Juneja's presence at the said premises cannot be explained since he could have telephoned to enquire regarding the whereabouts of his brother-in-law rather than go there himself. Taking into consideration the arguments advanced by the learned Counsel for the appellant in this regard we find a glaring overlap in the timing of PW 2's visit and commission of the said offence.

(iv) The prosecution case about the house of the deceased not having a telephone is extremely dubious in the light of the evidence given by the son of the deceased in his examination-in-chief. In the examination-in-chief, Sanjay Grover, the son of the deceased has clearly stated that telephone call by the servant was made from his residence. No doubt, in the cross examination he has tried to back out from the impact of the statement by stating that they had no telephone at their house at that time. In our view, in the absence of any Explanation given as to the period during which the phone was available at his house, the attempt to back out of the statement made by Sanjay Grover casts grave doubt on his testimony and, indeed, the fulcrum of the prosecution case that there was no telephone at his house. Once this Court is persuaded to the view, which it is, that there was a telephone at the residence of Sanjay Grover and considering the affluence of the family witnessed by a self owned property, a car and a working self employed couple, there is no reason why there should not have been, then the entire substratum of the prosecution case of Dilip Juneja sighting the accused fortuitously appears extremely doubtful and does appear to be unbelievable. In case, there was a telephone in the house of Sanjay Grover, Dilip Juneja need not have travelled all the way to the house of deceased for sighting the accused fortuitously and could have easily ascertained the presence of his brother-in-law telephonically.

(v) In our view, consequently, this Court is unable to accept the presence of Dilip Juneja and his sighting of the accused. Once the sighting of the accused at the spot is disbelieved, then the only evidence giving the accused with the occurrence is the alleged disclosure and recovery and, therefore, this Court is required to scrutinize the evidence of recovery and disclosure with greater care.

(vi) Dilip Juneja's testimony is also doubtful in view of the scientific evidence of semi-digested food contradicted the time of the presence of the Dilip Juneja on the scene. It is also surprising that the prosecution has not cared to examine the landlord who according to prosecution version was present on the spot of occurrence once the dead body was recovered. Even the non examination of maid servant who used to be there till 1 pm and then come back by 3 pm or 4 pm according to the deposition of PW5, Anchal Grover, throws doubt on the prosecution version.

(vii) PW-1 Sanjay Grover had not seen the accused at the spot but only deposed to have seen him coming to his boutique and this clearly shows that the TIP, if any, should have been conducted by PW 2 Dilip Juneja who had said to have seen the accused at the relevant time of the incident, i.e., at 3:00 pm.

10. Analysing the testimony of main IO Abhey Singh (PW24) and SI Dalip (PW 22) it is contended that according to prosecution case, accused Lala Ram was arrested at the instance of Shamshad. But according to PW 4 accused Lala Ram was arrested at the instance of a secret informer. It is contended that PW 13 has not supported the prosecution and therefore the arrest of accused Lala Ram in the manner deposed by PW 24 and subsequent recovery of the purse containing tops was very much doubtful. It is submitted that the purse was not shown to PW 1 for identification so it was very much doubtful as to whom the purse belonged. It is vehemently contended that PW 24 in fact had done nothing and he was added later on as a witness, being Addl. SHO which was clear from the fact that PW 24 claimed that he had prepared the site plan which was not correct. It is also pointed out that according to PW 22 the disclosure statement of Lala Ram was recorded by PW 24. But according to PW 24 the disclosure statement was recorded by PW 22. It is submitted that according to PW 22 the informer had also gone to bus stand with them, but according to PW 24 the informer after passing on the information had left Police Station and he again met them at bus stand. It is submitted that all these contradictions made both PW 22 and PW 24 doubtful witness whose statements are not worth of reliance.

11. The motive ascribed to the accused for having committed the offence, according to the prosecution case, is that PW1 owed Abrar Ahmed Rs. 400/-. This motive appears to be to remote insignificant and insufficient to commit murder since it is not even the prosecution's case that any altercation had taken place between PW1 and the accused in order to provoke them into committing larceny and murder. According to PW1, he had told the accused that he would be giving the concerned sum of money due to him after some time and in such an event, so there appears to be no reason why the accused would commit such a serious offence. Besides, Rs. 400/- which were promised to be paid do not seem to provide sufficient motive.

12. It is a matter of record that the accused Lala Ram was arrested from a bus stand in Madipur and he is said to have made a disclosure statement in relation to the jewellery missing from the person of the deceased. Thereafter he led to the recovery of the said items. However, there are certain factors that lead us to doubt the authenticity of the arrest and the recoveries.

13. The prosecution version regarding the arrest of the three accused is also not without material shortcomings. There are glaring discrepancies and differences in the testimonies of the PWs which throw considerable doubt about the prosecution case. PW 1 stated that the accused Lala Ram was arrested from the bus stand when he was pointed out by PW 13 Shamshad from a distance of 15-20 paces. The plea of Mr. Chandra, the learned Counsel for the accused Lala Ram needs to be taken note of here, i.e., since even according to the prosecution's case Shamshad who used to work in PW 1's boutique had not seen the assailants before the arrest and thus it is questionable and indeed highly doubtful as to how he could point out in a crowd who Lala Ram was. The testimonies of PW 24 and PW 22 which clearly state that the accused was arrested at the behest of and pointing out by a secret informer also contradict the testimony of PW 1 in this regard. This not only makes the prosecution theory doubtful but also lead us to think the fulcrum of the case, i.e., the manner of/and recoveries arrest to be not of sufficient probity to sustain a conviction under Sections 394/302/34 IPC.

14. Further, the recoveries made subsequent to the disclosure statement of Lala Ram are as dubious as the circumstances of his arrest. According to the PW 24 IO Abhey Singh pursuant to his disclosure statement Lala Ram had led him to the house. In cross examination on behalf of Lala Ram and Vakeel Ahmed, PW 24 stated that he had been unable to get independent witnesses in this regard.

This statement is in contradiction to the statement of PW 1 who claimed that he was present in Lala Ram's house at the time of recovery and that the ear-tops were in a purse lying on a shelf in the room. While there are no independent witnesses in this regard, at the same time, the evidence of interested witness, i.e., PW 1 has to be considered only upon proper scrutiny. The view taken by the Hon'ble Supreme Court in *State of Haryana v. Ram Singh* : 2002 CriLJ987 , in this regard is:

19. ...while it is true that legitimacy of interested witnesses cannot be discredited in any way nor termed to be a suspect witness but the evidence before being ascribed to be trustworthy or being capable of creating confidence, the Court has to consider the same upon proper scrutiny.

15. The circumstances of recovery of the pearl necklace is also in no manner satisfactory so as to confirm the guilt of the accused. According to the testimonies of PW8 Constable Daljeet, PW 11 Constable Vijay Bahadur and PW 16 HC Ghashyam Meena although initially stated that accused Lala Ram was taking them to Udham Singh Nagar, U.P. for the recovery of pearl string, but during the halt for a meal en route, Lala Ram is said to have disclosed that he had given a wrong disclosure statement earlier and that he had actually given the string of pearls to his girl friend at Madi Pur. According to the testimonies of these three PWs, they went back to Delhi to the house of Lalita said to be a friend of Lala Ram and recovered the pearl string.

The arrests of Vakil Ahmed and Abrar Ahmed are also very doubtful since neither the Railway staff nor the taxi driver were made witnesses in this case as they were independent witnesses.

16. Further, the depositions of PWs regarding the recovery of the gold kadas is ridden with infirmities such as:

(i) According to PW16, the gold bangles were recovered from Vakil Ahmed's house in Madipur, from a larder and the room was not found to be locked but bolted.

(ii) According to PW17, the door was found locked and he could not tell the manner of recovery of the gold kadas.

(iii) According to PW21, the door of the house was found open.

The recoveries are further tainted as there are no independent witnesses in this regard. The Hon'ble Supreme Court has taken a view that such recoveries 'do not inspire confidence' and had ordered acquittal in the case of Sanspal Singh v. State of Delhi : 1999 CriLJ19 .

It was observed by the Hon'ble Supreme Court in the said case that:

3. Inter alia, it has been urged by the learned Counsel for the appellant that it would not be safe to maintain the conviction because the recovery of the illicit arms did not inspire confidence, supported as it is, by the evidence of two police officials alone, unassociated by the testimony of any independent witness. It has also been urged that witnesses of the public were available and neither were they associated nor was any Explanationn given at the trial as to why they were not associated. From the evidence of PW 5 Head Constable Sat Pal Singh, it is clear that the police party did not ask any public witness to be witness at the time of search of the accused. Likewise, PW 6 Sub-Inspector Mahipal Singh has also stated that no public witness was joined at the time of the search of the accused even though a number of persons were passing through at the time when the recovery was being effected. It is thus evident that public witnesses were available and could have been associated to witness the recovery. It would have been a different matter altogether had there been no public witness available or none was willing to associate. Here, as said before, public witnesses were available but no Explanationn on these lines is forthcoming. Thus, we got to the view that it would

be unsafe to maintain the conviction of the appellant for the offences charged. We, therefore, order his acquittal. He is in jail. He be set at liberty forthwith.

These observations of the Apex Court further find unmistakable resonance in Jagdish and Anr. v. State of M.P. : 2000 CriLJ2955 ,

11. So far as the recoveries were concerned, the star witnesses are again the Same witness who were stated to have been at the scene of occurrence a little later and who are related to the deceased. In the absence of independent witnesses being present at the time when panchanamas were written or recoveries were made, the trial court rightly did not rely on the same.

Furthermore, since the participation of the appellant in the robbery has not been established the reliance on Wasim Khan v. State of U.P. : 1956 CriLJ790 by the State is not warranted.

17. The attempt made by Sanjay Grover PW 1 to back out of the statement, regarding the presence of a telephone from which his servant Sartaj called him casts doubt on the prosecution's case. The likely presence of a telephone persuades this court to believe that there was no occasion for Dilip Juneja PW2 to have visited the deceased's house and then to have fortuitously sighted the accused there. This Court is also of the view the Dilip Juneja's testimony regarding the time of his visit is not worthy of belief even qua the scientific evidence of semi digested food present in the stomach of the deceased. The non examination of the landlord, the neighbours and the maid servant is a vital infirmity in the prosecution's case. The deliberate absence of clinching scientific evidence such as the fingerprint report without Explanationn further weakens the prosecution's case. The arrests and recoveries made pursuant to the disclosures are also not substantiated with sound evidence. There are no eyewitnesses in this case and the case is entirely built up on circumstantial evidence but the same is not without material shortcomings. Thus the prosecution has been unable to prove its case against the accused.

18. Accordingly, the appeal is allowed and the judgment and order of the Additional Sessions Judge dated 22nd and 25th March 2004 in S.C. No. 7/2000

arising out of FIR No. 585/99 from Police Station Paschim Vihar, are set aside and the appellant is acquitted of all the charges and if he is in jail he shall be released forthwith, unless required for some other case and if he is on bail his bail bonds are cancelled.

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