

State of Rajasthan Vs. Ramesh

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Court : Rajasthan

Decided On : May-22-2001

Reported in : 2002(2)WLN520

Judge : N.N. Mathur and; D.N. Joshi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 294, 302, 392, 394, 395 and 397; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313; Evidence Act - Sections 8 and 114; Prison Rules

Appeal No. : D.B. Criminal Murder Reference No. 2 of 2000

Appellant : State of Rajasthan

Respondent : Ramesh

Advocate for Def. : A.R. Nikub, Public Prosecutor

Advocate for Pet/Ap. : Pradeep Shah and; I.R. Choudhary, Advs.

Disposition : Appeal dismissed

Judgement :

Mathur, J.

1. The learned Additional Sessions Judge, Banswara, by judgment dated 7th September, 2000, has convicted the respondent Ramesh of offence under Section

302 IPC and sentenced to death. He has submitted the proceedings to this court for confirmation of the death sentence, which has been registered as D.B. Criminal Murder Reference No. 2/2000 'State of Rajasthan v. Ramesh'. The conviction and sentence has also been challenged by filing a joint appeal on behalf of accused respondents Ramesh and Suraj. The second appellant Suraj has been convicted of the offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/- and in default of payment of fine to further undergo six months' rigorous imprisonment. They have also been convicted of the offence under Section 394/397 IPC and sentenced to ten years' rigorous imprisonment and a fine of Rs. 1000/-each and in default of payment of fine to further undergo six months' rigorous imprisonment. The appeal has been rigorous imprisonment. The appeal has been registered as 'Ramesh and Anr. v. State of Rajasthan' (1). Both the accused have also preferred appeals through Jail, registered as D.B. Criminal Jail Appeals No. 1269/2000 and 665/2000.

2. The prosecution case as disclosed during trial is that deceased Nand Kishore was a wholesale dealer of cloths at Banswara. On alternate Sundays, he alongwith his munim deceased Mahendra Kumar used to visit number of villages of Kushalgarh area for supply of cloths to small shop keepers and recovery of dues in jeep bearing No. RJB 9191, driven by his driver appellant Ramesh. On the fateful day i.e. on 15.10.95, they visited number of villages on routine trip and collected dues in large sum. In this trip, second accused Suraj also accompanied them. After completing the job for the day, before leaving Kushalgarh for Banswara, jeep was parked in front of a beelal shop. P.W. 7 Jitendra Joshi and PW 8 Gajraj Singh made a request to deceased Nand Kishore for lift upto village Bagidora. The request was accepted by Nand Kishore but it was resisted by the driver. However, both the them succeeded in boarding the jeep. The appellant Ramesh before proceeding further, on a false pretext, got them down near Kalinjara Bridge. At about 11.15 P.M., the appellant Ramesh presented himself before the Police Station, Kalinjara, and lodged an oral FIR stating inter alia that he was a driver on the jeep of Nand Kishore bearing No. RJB 9191 and in the afternoon, he alongwith Nand Kishore and Munim Mahendra Kumar travelled to several villages i.e. Karji, Badodiya, Kalinjara, Hejamal etc. Nand Kishore received orders for supply of cloths and whatever material was available in the jeep was

supplied. He also recovered money due from various shop keepers in different villages. They left Kushalgarh at about 9.30 PM. and reached at village Bhoyan at about 10.30 P.M. Five to six persons wearing black underwear and black baniyaan appeared on the road and hurled stones on the jeep. He sustained injury on his head. The glass was broken. He left the jeep and ran away to report the matter to Police. He also stated that Seth and Munim were in the jeep. He expressed apprehension of robbery by miscreants. On this information, police registered a case for the offence under Section 395 IPC and proceeded with investigation. P.W. 47 Man Singh, Incharge of the Police Station, Kalinjara alongwith the police party reached on the spot. Accused Ramesh pointed out the place of incident. They could not trace Seth and Munim in the night. However, in the morning at about 6 A.M., constable Kailash reported that two dead bodies were seen near the outskirts of village Bhoyan lying in a bush. The Investigating Officer, added the offence under Section 302 IPC, inspected and prepared the site plan Ex. P.2 He also prepared the inquest report and sent both the dead bodies for post mortem. During inspection, he suspected the involvement of informant Ramesh in the crimes. He found the information given by Ramesh false and fabricated. Firstly, because there were no marks of stones on the jeep and further no stone was lying there and the dead bodies which were lying at a distance of 30 ft. from the jeep. Secondly, the pieces of broken glass were on the blood, which suggests that murder was committed first and then glasses were broken. In case, the information given by the accused was correct, then the blood would have been on the broken pieces of glasses. Near the dead bodies, there were no marks of tyres. Ordinarily, the driver would have been the first victim. Fourthly, if it was a case of robbery, there would have been signs of struggle on the spot i.e. the place from where the dead body was recovered. Fifthly, though as per the version given by accused Ramesh, seeing the robbers, he ran away and presented himself at the Police Station but one of his shoes stained with blood, was lying on the spot, which suggests that driver of the jeep did not immediately run away seeing the robbers but he was there for some time near the dead bodies. There were blood marks on the gate and other places inside the jeep, which suggests that struggle took place inside the jeep and thereafter the dead bodies were taken about a distance of 30 ft. and concealed in bushes. He also found the blood stains on the clothes of the

driver viz; Ramesh. There were also some injuries on his person. Accordingly, the Investigating Officer arrested the appellant Ramesh on the spot. He was medically examined and injury report Ex. P.44 was prepared. The police seized and packed the other articles from the spot. During investigation, police made recovery of weapon of offence and other articles In pursuance of the informations given by the accused persons. After usual investigation, police laid chargesheet against the appellants Ramesh and Suraj for the offences under Sections 302, 392, 394 IPC.

3. Both the appellants denied the charges levelled against them and claimed trial. The prosecution in support of the case examined 49 witnesses. The accused in their statements under Section 313 of the Code of Criminal Procedure denied the correctness of the prosecution evidence appearing against them. The defence examined D.W. 1 Ganpat Lal. The trial Court found the following piece of circumstances proved against the appellants:

4. RAMESH :

- i. Deceased Nand Kishore and Mahendra Kumar were last seen in the company of appellants Ramesh and Suraj;
- ii. The presence of blood stains on the black shoe of Ramesh lying near the dead body and the jeep;
- iii. Unexplained Injuries on the person of appellant Ramesh;
- iv. Unexplained blood stains of human origin on the clothes of Ramesh;
- v. The recovery of blood stained knife and blood stained 'danda' in pursuance of the information given by appellant Ramesh;
- vi. The presence of finger prints of appellant Ramesh on bag, papers etc. belonging to the deceased and recovery from the place of incident;
- vii. The appellant Ramesh misled the police and put investigating agency on false track by lodging false F.I.R. of robbery by robbers wearing black underwear and baniyan.

viii. Motive for committing the murder.

5. SURAJ:

1. Deceased Nand Kishore and Mahendra Kumar were last seen in the company of the appellant Ramesh and Suraj;

ii. The recovery of currency notes of Rs. 88,800/-;

iii. The recovery of blood stained shoes belonging to Suraj from the place of occurrence;

6. The trial Court found that commission of the murders and the robbery formed part of one transaction. He also found the charges proved against the appellants. In view of the finding, he convicted & sentenced the appellants in the manner noticed above.

7. We have heard Mr. Pradeep Shah, learned counsel for the appellants and Mr. A.R. Nikub, Public Prosecutor and perused the record carefully.

8. It is contended by the learned counsel that none of the circumstances has been established by cogent evidence. It is also submitted that the narration of incident given by the accused appellant Ramesh in the F.I.R. is more probable in the facts of the case. It is also submitted that the circumstances put forward by the prosecution are not sufficient to hold the appellants guilty of murder of Nand Kishore and Mahendra Kumar. On the other hand, learned Public Prosecutor has supported the judgment of the trial court.

9. We have scanned, scrutinised and evaluated the prosecution evidence exhaustively and considered the rival contentions. Before we deal with each of the circumstances, we may give the conspectus of the prosecution evidence led before the trial Court.

10. P.W. 1 Savji, P.W. Moti Singh, P.W. 3 Monoherlal, P.'w. 4 Nawal Kishore, P.W. 5 Kirtish Kumar, P.W. 6 Mukesh Kumar, P.W. 10 Veerji and P.W. 11 Yadav Chandra are formal witnesses. They are motbirs of different memos prepared by the police.

11. P.W. 7 Jitendra Joshi is a resident of Kushalgarh. He has stated that on the date of incident, he was standing on a beetle shop alongwith Gajraj and Khushal. They were waiting for a vehicle for going to village Bagidora to witness a cultural programme of Pallavi Jain. They found a jeep bearing No. RJB 9191 arrived and stopped nearby them. He approached the driver of the vehicle and made a request for lift upto Bagidora, but it was turned down. Then he made a request to Nand Kishore. The request was accepted by him. The driver of the vehicle resisted the permission given by Nand Kishore but somehow he succeeded in boarding the jeep. The rear seat was already occupied by one person, who disclosed his name as Suraj. They were asked to get down on a culvert before Kalinjara. After watching the cultural programme, they returned to village Kushalgarh at about 12. In the morning, they came to know that the said jeep was looted and the owner of the vehicle Nand Kishore and his Munim Mahendra Kumar were murdered. The statement of P.W. 8 Gajraj Singh is almost in the same line. He admitted that his statement was recorded on the same day i.e. the day on which the news about the twin murder had appeared in the newspaper.

12. P.W. 9 Ahmed Hussain is a bus driver. He has resiled from his earlier statement that after the incident, Suraj had boarded the bus. Hence, he has been declared hostile.

13. P.W. 12 Mst. Pushpa Deyi is the widow of deceased Nand Kishore. She has stated that accused Ramesh was a driver on the jeep bearing No. RJB 9191. On 15.10.1995, her husband Nand Kishore alongwith Munim Mahendra Kumar had gone to Kushalgarh on usual business trip. The jeep was being driven by appellant Ramesh. She also stated that her husband was wearing a disco designed golden chain. She has identified the gold chain in the court as well as in the identification proceedings.

14. P.W. 13 Badri Narain is the brother of deceased Nand Kishore. He has stated that his brother Nand Kishore had gone for collecting the dues from various shop keepers in the jeep driven by Ramesh. He also stated that Munim Mahendra Kumar accompanied him. He further stated that at about 12 in the night, an information was received to the effect that his brother met with an accident,

therefore, he proceeded to the Police Station, Kalinjara in the night itself in another jeep. There was no trace of his brother and Munim. In the morning at about 6.00, the dead bodies were found at a distance of 4 kms. from the Police Station, Kalinjara. He identified the ring and other ornaments of deceased Nand Kishore in the identification proceedings as well as in the court.

15. P.W. 14 Shantilal runs a cloth shop at Kushalgarh. He has stated that on 15.10.1995, deceased Nand Kishore visited his shop. He paid him Rs. 150/- and obtained a receipt No. 3053. He also stated that the jeep was driven by accused Ramesh. The deceased's Munim Mahendra Kumar was also in the jeep. He also identified the accused Ramesh present in the court. The statement of P.W. 15 Rupesh Kumar to P.W. 40 Rajendra Kumar are almost on the same line. They are the dealers of cloths in different villages and they have given brief account of their business transaction with Nand Kishore on the fateful day. All the witnesses have stated that deceased Nand Kishore and Mahendra visited their shops together in the jeep driven by appellant Ramesh.

16. P.W. 14 Asha Ram Soni has stated that he conducted the post mortem of deceased Nand Kishore and noticed the following injuries:

- '1. Lacerated wound : A depressed fracture and lacerated wound about the size 2-1/2' x 1/2' present just above the left orbital region with fracture of frontal bone;
2. Penetrating wound : 1/2' x 1/4' deep into peritoneum cavity passing upward from left iliae fossa to Renal area;
3. Incised wound 1/2' x 1/4' skin deep bleeding margin everted;
4. Penetrating wound : 1/2' x 1/4' x deep upto left pleural cavity;
5. Incised wound 1/2' x 1/4' x 1/4' x muscle deep;
6. Incised wound 1 -1/2' x 1/2' muscle deep;
7. Incised wound 1/2' x 1/4' skin deep.'

He has proved the post mortem report Ex. P.43. He found the injuries ante mortem in nature. In his opinion, the cause of death was asphyxia and simultaneously coma with stab injury directly over the left lung and left kidney.

17. He also stated that on the same day, he conducted the post mortem of the dead body of Mahendra Kumar and noticed the following injuries:

1. Incised wound 2-1/2 x 1/2' in dimension margin, Clear smooth Extending from upper part of right ear to downward;

2. Lacerated wound 2' x 1/4' x skull bone deep, bleeding, margin inverted edge, teared, just above the right ear region;

3. Lacerated wound 1-1/2' x 1/4' x skull bone deep, bleeding, Margin inverted, edge rough irregular, just above and lateral to injury No. 2;

4. Lacerated wound 1' x 1/12' x skull bone bleeding, Margin inverted, teared, rough, just above the injury No. 3;

5. Lacerated wound 1/2' x 1/12' x skull bone, bleeding, Margin inverted, teared, rough, just above injury No. 4;

6. Lacerated wound 1/2' x 1/12' in dimension skull bone deep, bleeding, Margin inverted, just above the left ear region;

7. Lacerated wound 1/2' x 1/12' in dimension skull bone deep bleeding, inverted margin, just above the injury No. 6;

8. Lacerated wound 1/4' x 1/12' in dimension skull bone deep bleeding, margin inverted, teared Rough, irregular, just above and lateral to rib No. 7;

9. Incised wound 1/4' x 1/12' dimension skin deep, margin everted, smooth clear, just below the right orbital region;

10. Incised wound 1/4' x 1/12' x dimension skin deep, margin everted, clear smooth, just at the sub mandibular angle right side;

11. Incised wound 1/4' x 1/12' in dimension skin deep, Margin everted, Clear smoth. Just at the centre of middle of lower jaw;

12. Incised wound 1/2' x 1/12' x muscle deep, bleeding, Margin everted. Smoth clear situated over the upper part of left lateral side of neck;

13. Incised wound 3/4' x 1/4' in dimension, penetration obliquely downward to pleural cavity causing rupture of middle part of left lung;

14. Incised wound 1/2' x 1/4' in dimension muscle deep, margin everted. Smoth just below the injury No. 12;

15. Incised wound 1/2' x 1/4' in dimension skin deep margin everted. Smoth situated 1/4' below the injury No. 13;

16. Incised wound 1/2' x 1/4' in dimension muscle deep, margin everted, Smolh situated. Just lower border of 9th rib on left side of back of chest just near to midline;

17. Penetrating wound about 3/4' x 1/4' in dimension going direct penetrating to the liver causing rupture of liver in the upper and posterior part situated Rib No. 9 right side on the back of chest near midline;

18. Penetrating wound 1/2' x 1/4' in dimension going deep upto peritoneal cavity.'

He has proved the post mortem report Ex. P.42. He found the injuries ante mortem in nature. In his opinion, the cause of death was coma and multiple stab wound injuries with rupture of left lung, liver cavity by povolumic shock.

18. On the same day, he also examined accused Ramesh and noticed the following injuries;

'1. Abrasion 3/4' in length linear in shape bright red in colour over the forehead region vertical in direction;

2. Abrasion 1/4' in length linear in shape bright red in colour over the top of the scalp forehead region;

3. Abrasion 1-1/2' long linear in shape bright red in colour vertical in direction over the body of mandibular sterno;
4. Abrasion 1-1/2' long linear in shape bright red in colour transverse in direction over the mandibular sterno just below injury No, 3;
5. Abrasion 3/4' x 1/4' in dimension bright red in colour over the upper 1/3rd of right forearm;
6. Abrasion 1/4' length linear in shape bright red in colour over the lower 1/5 anterior surface right forearm;
7. Abrasion 1/4' length linear in shape bright red in colour over the right forearm 1/2' below the injury No. 2.'

He has proved the injury report Ex. P.44.

19. P.W. 42 Suresh Chandra is a photographer. P.W. 43 Nathulal, PW 48 Mohd. Sarif and P.W. 49 Karan Singh are the police witnesses to prove that articles seized and packed remained intact till they were delivered in the Forensic Science Laboratory, Jaipur. The link evidence has not been challenged by counsel for appellants, still we have perused and satisfied ourselves but we do not consider it necessary to discuss the same.

20. P.W. 44 Prakash Chandra Jain is the Tehsildar, Bagidora. The test identification proceedings of golden chain belonging to deceased Nand Kishore was conducted in his presence. He has proved the test identification memo Ex. P. 38.

21. P.W. 45 Govind Narain, P.W. 46 Abdul Razzak and P.W. 49 Karan Singh are the witnesses to prove the fingerprints of accused Ramesh on the bag and other papers belonging to deceased Nand Kishore.

22. P.W. 47 Man Singh is the Investigating Officer. He has given complete details of the investigation.

23. D.W. 1 Ganpat is the neighbour of appellant Suraj. He has simply stated that he is a vegetable seller and earns about Rs. 40 to 50 per day.

24. The prosecution case entirely rests on circumstantial evidence. It is now well settled that in a case of circumstantial evidence, the prosecution is required to establish each circumstance firmly by cogent evidence. Further, such circumstances, taken together, should form a chain pointing towards the guilt of the accused and the cumulative effect of circumstances should lead to no other hypothesis, but the guilt of the accused. Keeping this in mind, we proceed to deal with each circumstance against, each of the appellants separately.

RAMESH :

25. The first circumstance against appellant Ramesh is that both the deceased Nand Kishore and Mahendra Kumar were last seen in the company of appellants Ramesh and Suraj. To prove this circumstance, prosecution has examined P.W. 7 Jitendra Joshi, P.W. 8 Gajraj Singh, P.W. 12 Mst. Pushpa Devi and P.W. 13 Badri Narain.

26. P.W. 7 Jitendra Joshi has stated that in Kushalgarh town, he alongwith Khushal and Gajraj, was standing on the Jugnu Beetle Shop, looking for a vehicle for going to Bagidora to attend a cultural programme, performed by Paliavi Jain. He found a jeep bearing No. RJB 9191 parked nearby. He approached to the driver of the vehicle for giving him lift upto village Bagidora but the same was denied. However, the owner of the vehicle namely Nand Kishore allowed them to board the jeep. They occupied the rear seat. One more person was sitting there. On the way, he enquired his name, upon which he disclosed his name as Suraj Bhoiwada of Banswara. The driver stopped the jeep before village Kalinjra near a culvert and asked them to get down. They were, in total, 3 persons and as such paid the driver Rs. 12A. Thereafter, they boarded another car and reached Bagidora. He also stated that alongwith Seth, his Munim was also sitting in the Jeep. He returned to Kushalgarh at about 12 in the night. In the morning, he heard that a robbery has been committed in which Seth Nand Kishore and his Munim have been murdered. The statement of P.W. 8 Gajraj Singh is also almost on the same line.

27. P.W. 12 Smt. Pushpa Devi is the widow of deceased Nand Kishore. She stated that on 15.10.95, her husband Nand Kishore alongwith Munim Mahendra Kumar went to Kushalgarh and nearby villages in jeep No RJB 9191. The jeep was driven by appellant Ramesh. They left in the morning at about 11 A.M. Normally, he used to return by 9 or 10 P.M. but on that day, he did not return. At about 12 or 1 in the night, she received a telephonic message to the effect that her husband has met with an accident. Her relatives went to Kalinjra. In the morning, she came to know that her husband and Munim have been Murdered near Kalinjra. In the cross examination, she admitted that appellant Ramesh was a driver on the jeep for last more than 3 to 4 years. She also stated that she knew Ramesh well as she used to visit her relatives in the jeep driven by appellant Ramesh.

28. P.W. 13 Badri Narain is the brother of deceased Nand Kishore. He has stated that on 15.10.95, his brother Nand Kishore had gone to Kushalgarh and nearby villages on business trip. He was accompanied by Munim Mahendra. The jeep was driven by appellant Ramesh.

29. P.W. 14 Shantilal has stated that on 15.10.95, deceased Nand Kishore and Munim Mahendra visited his shop, took the order and received the payment due. He also state that they came to his shop in the jeep driven by appellant Ramesh. He has stated that he knew appellant Ramesh as he has been visiting his shop for last number of years as driver on the jeep of Nand Kishore. Similar is the statement of P.W. 24 Rajmal, P.W. 26 Sandeep, P.W. 27 Kanlilal, P.W. 28 Girvar Singh, P.W. 29 Ramesh Chandra, P.W. 30 Kamlesh, P.W. 31 Maganlal, P.W. 32 Mahendra Kumar, P.W. 33 Nathmal, P.W. 34 Sukhlal, P.W. 38 Vinay Kumar and P.W. 39 Pannalal.

30. It is contended by Mr. Pradeep Shah, learned counsel for the appellants, that no identification parade has been arranged and, as such, it cannot be said that the jeep was driven by appellant Ramesh. There is no substance in the contention. P.W. 12 Smt. Pushpa Devi has stated that appellant Ramesh was driver on the jeep for last more than four years. He used to accompany her husband on the business trip towards Kushalgarh. In addition to P.W. 7 Jitendra Joshi and P.W. 8

Gajraj Singh, there are number of other witnesses referred to above, who knew appellant Ramesh as he used to regularly visit their shops alongwith deceased Nand Kishore. They have stated that on the date of incident also, Nand Kishore alongwith Munim Mahendra Kumar arrived at their shops in the jeep driven by appellant Ramesh. Thus, there is overwhelming evidence that deceased Nand Kishore and Mahendra Kumar were last seen in the company of appellant Ramesh. The prosecution has succeeded in establishing the first circumstance firmly by cogent evidence.

31. As regards the second circumstance, P.W. 47 Man Singh has stated that he prepared the site plan Ex. P.1 He found one shoe, Article-6 on the spot. It was seized and packed vide Ex. P.20 and sent to. Forensic Science Laboratory, which has been found stained with human blood vide F.S.L. report Ex. P. 108. The seizure has been supported by motbirs P.W. 1 Savji and P.W. 3 Manoharlal. The appellant Ramesh has not given any explanation as to presence of human blood on the shoe. Thus, this circumstance has also been established by the prosecution.

32. As regards the third circumstance, P.W. 47 Man Singh has stated that appellant Ramesh was arrested on 16.10.95 vide Ex. P.30. He was medically examined on the same day vide Ex. P.44 by Dr. Asha Ram Soni. In the cross examination, the doctor admitted that injuries shown in Ex. P.44 cannot be caused by striking stones. He also stated that there were trait of scratches and abrasions. The injuries were typically of the kind which a person may sustain while grappling. The incident alleged to have taken place on 15.10.95 between 9.30 to 11.00 P.M. and the appellant was examined by the doctor at 6.30 P.M. on 16.10.95. According to medical evidence, duration of the injuries was 24 hours. This shows that appellant sustained injuries in the course of the incident in which Nand Kishore and Mahendra died. Failure of any reasonable explanation of the injuries by the appellant Ramesh, slrongly points towards, his culpability in the crime.

33. As regards the fourth circumstance, P.W. 47 Man Singh has stated that clothes which the accused Ramesh was wearing at the time of arrest, viz; pant, bushirt and baniyaan, were seized vide Ex. P. 15. These clothes were stained with

blood. P.W. 4 Nawal Kishore is a motbir of the recovery of seizure of the clothes. They were seized and packed on the spot. They were sent to the Forensic Science Laboratory. As per the F.S.L. report Ex. P. 108, the blood stains on pant, bushirt and baniyaan are of human origin. The appellant has not given any explanation as to the presence of human blood on his clothes. It is a strong conclusive incriminating circumstance against the appellant.

34. As regards the fifth circumstance i.e. the recovery of blood stained knife and blood stained 'danda' in pursuance of the information given by appellant Ramesh, P.W. 47 Man Singh has stated that appellant Ramesh made a disclosure statement Ex. P. 93 leading to recovery of a blood stained knife vide Ex. P,24. The recovery has been made in the presence of P.W. 6 Mukesh Kumar. The blood stains on the knife has been found to be of human origin. In pursuance of the information Ex. P.92, a blood stained 'danda' has also been recovered vide Ex. P.24. The 'danda' was packed and sealed on the spot. The blood stains on the 'danda' have been found to be of human origin as per F.S.L. report Ex. P. 108. Thus, this circumstance has also been proved firmly by cogent evidence against the appellant.

35. Sixth circumstance is with regard to presence of finger prints of appellant Ramesh on bag and papers etc. found on the spot near the dead bodies. Two bags and papers were seized by the police vide Ex. P.7. P.W. 3 Manoharlal is motbir to support the recovery. P.W. 45 Govind Narain is the photographer. He has stated that on 19.10.95, he had taken the photographs of the chance print at the Police Station, Kalinjra in the F.I.R. Case No. 449/95. He has proved the photographs Ex. P. 83 to Ex. P.91. He also stated that chance prints were later on sent to the Finger Print Bureau, Jaipur. P.W. 46 Abdul Razzak has stated that he was posted as Police Inspector in the Finger Print Bureau. On receiving the message from Superintendent of Police, Banswara, he alongwith photographer Govind Narain reached Kalinjra on 19.10.95. From the black powder, chance prints were developed, which were on the bag and certain papers. He also stated that three chance prints marked 'C' were developed as 'C-1' and 'C-2'. As per the F.S.L. (Finger Print) report Ex. P.109, chance print photographs marked 'C-4' are similar and identical with the specimen finger print photographs. Thus, this

circumstance has also been established against the appellant.

36. The last but the most important circumstance against the appellant is that he tried to mislead the police.

The Apex Court in *State of U.P. v. Hari Mohan (2)*, considered the contradictory statement of the accused, with respect to the incident as an important incriminating circumstance. The Apex Court observed thus:

'Making of a contradictory statement on a fact which the accused knew well that it is a wrong statement on a very vital aspect concerning the death of the deceased can also be counted, among other circumstances, as a link in the chain of circumstances to connect the accused with the commission of the crime.'

In *Smt. Basanti v. State of Himachal Pradesh (3)*, the accused appellant Smt. Basanti was charged for murder of her husband. One of the circumstances that she misled her brother-in-law and other villagers and put them on a false track telling them that deceased Prabhu Ram had gone away from the village and had not returned, was found to be an important incriminating circumstance. The Court held that her conduct was clearly admissible under Section 8 of the Evidence Act as part of *res gestae* as a evidence of conduct immediately after the occurrence. It will be convenient to extract the observations of the Apex Court in para 3 as follows:

'There is evidence that Smt. Basanti put the villagers including her brother-in-law Maloo, PW27 on a false track by telling them that deceased Prabhu Ram had gone away from the village and had not clearly admissible under Section 8 of the Evidence Act as part of *res gestae* as a evidence of conduct immediately after the occurrence.'

A reference may also be made to the decision of the Apex Court in *Geetha v. State of Kamataka (4)*, *Kuldeep Singh v. State of Rajasthan (5)*, and *State of U.P. v. Babu Ram (6)*.

37. In the instant case, there is evidence of P.W. 7 Jitendra Joshi and P.W. 8 (Gajra) Singh that the jeep occupied by Nand Kishore and Munim Mahendra Kumar

and driven by accused Ramesh, left Kushalgarh at about 9 P.M. towards Banswara. He was dropped alongwith others near culvert at Kalinjra. After one and half hours, appellant Ramesh Lodged a F.I.R. at Police Station, Kalinjra stating that he alongwith deceased Nand Kishore and Mahendra Kumar left Kushalgarh at about 9.30 P.M. and reached at village Bhojan at about 10.30 P.M. where five to six persons wearing black underwear and black baniyaan abruptly appeared on the road and hurled stones on the jeep. He also sustained injury on the head, the glass was broken and he left the jeep and ran away to report the matter to the police. He also expressed his apprehension that miscreants must have looted the large sum collected. This version of the appellant is, on the face of it, false and fabricated. Firstly because if he ran away from the spot, there was absolutely no occasion for presence of human blood on his clothes. He has not given any explanation as to the presence of blood on his clothes. In the F.I.R., he has stated that miscreants hurled stones on his jeep but no marks of stones have been found on the jeep. Further, no stone has been found lying near the jeep. The dead bodies were lying at a distance of 30 ft. away from the jeep. Thirdly, as stated by the appellant in the F.I.R., the glass of the jeep was broken first and then the murder was committed. In such eventuality, the blood would have been on the broken pieces of glass but infact, broken pieces of glass have been found on the blood. The presence of blood stains on the shoes of the appellant on the spot suggests that the driver of the jeep did not immediately run away from the spot suggests that the driver of the jeep did not immediately run away from the spot seeing the robbers. In statement under Section 313 Cr PC, he has simply stated that he has been falsely implicated. He did not give version of the incident as given in the F.I.R. Thus, it is clear that he lodged a false F.I.R, with a view to mislead and put the investigation on false track. It is an important incriminating circumstance of conclusive nature against the appellant.

38. The motive behind the crime which infuriated the appellant Ramesh to commit the crime clearly appears to be robbery as it is he, who knew well that deceased Nand Kishore had collected and carrying large sum.

39. Thus, the prosecution has succeeded in establishing each circumstance firmly by cogent evidence against the appellant forming a complete chain leading to

inference of guilt against the appellant Ramesh.

SURAJ:

40. The first circumstance against the appellant Suraj is of last seen. P.W. 7 Jitendra Joshi and P.W. 8 Gajraj have stated that they boarded the jeep as per the permission given by deceased Nand Kishore. They occupied the back seat. A person already on the back seat, on enquiry, introduced himself as 'Suraj'. They travelled with him upto Kalinjra. When they were asked to get down near a culvert outside village Kalinjra. When both of them and one more person got down near the culvert, the jeep proceeded towards Banswara and appellant Suraj alone was sitting on the rear side of the jeep. The criticism levelled against this part of the evidence by the learned counsel for the appellant is that admittedly, P.W. 7 Jitendra Joshi and P.W. 8 Gajraj were not known to appellant Suraj prior to the boarding of the jeep and, as such, it was incumbent upon the prosecution to arrange an identification parade. We find substance in the contention. In absence of identification parade, the evidence of P.W. 7 and P.W. 8 on this aspect is of no use. The prosecution has failed to establish the circumstance of 'last seen' against appellant Suraj.

41. The second circumstance against the appellant is the recovery of gold chain of deceased Nand Kishore. P.W. 47 Man Singh has stated that in pursuance of the information given by appellant Suraj vide Ex. P.25, a gold chain was recovered from his house vide Ex. P.80. He prepared the site plan of the house vide Ex. P.90. The recovery was made in the presence of motbirs P.W. 5 Kirtish Kumar and Satya Narain. The goldchain has been identified by P.W. 12 Smt. Pushpa Devi, widow of deceased Nand Kishore. The golden chain belonging to deceased Nand Kishore has been recovered from the possession of appellant Sura) within two days of the murder of Nand Kishore. He has not given any explanation as to how, the gold chain came into his possession. This incriminating circumstance has been established by the prosecution firmly by cogent evidence.

42. The third circumstance against the appellant is the recovery of currency notes. P.W. 47 Man Singh has stated that the appellant was arrested on 17.10.95 vide Ex. P.92 and he made a disclosure statement stating that he concealed three

bundles of Currency Notes of Rs. 10,000/- each and 5 bundles of Rs. 50/- each of Currency Notes beneath the gas cylinder and four bundles of Rs. 50/- each in the kitchen. The Currency Notes worth Rs. 88,880/- were recovered vide Ex. P.16 from the kitchen of the house of appellant Suraj. The currency notes of Rs. 10,000/- were also recovered vide Ex. P.37 in pursuance of the information memo Ex. P.98. The appellant Suraj is a person of very little means. He has not disclosed as to how he came in possession of such a huge amount of Rs. 88,880/- . The recovery has been made within two days of robbery and murder. It is argued that there is nothing to show that recovered Currency Notes were part of looted property. The contention is not sustainable. It is difficult to comprehend that police will implant such a huge amount to implicate the accused Suraj. In absence of his explanation, there is a presumption against appellant Suraj under Section 114 of the Evidence Act. In Mohan Lal v. Ajit Singh (7), the fact of recovery of the unexplained possession of the incriminating article within six days was considered as 'quite a short period' and it was held to be not only a proof of robbery but presumptive evidence of the charge of murder as well.

43. A blood stained rubber shoe has also been recovered vide Ex. P.20 in pursuance of the information given vide Ex. P.80. As per the F.S.L. report Ex. P.108, the blood stains on the shoe are of human origin. He has not given any explanation with respect to the presence of human blood on his shoes.

44. The recent recovery of huge amount of Rs. 88,000/-, a gold chain of the deceased and the presence of human blood on his rubber shoes lead to the irresistible conclusion that appellant Suraj also participated in the murder of Nand Kishore and Mahendra Kumar.

45. In view of the aforesaid, on an exhaustive appreciation of evidence, we conclude that the learned Additional Sessions Judge has rightly held the appellants Ramesh and Suraj guilty of robbery and murder of Nand Kishore and Mahendra Kumar.

As regards the sentence, the crimes like the one before us, cannot be looked upon with equanimity because they tend to destroy one's faith. We condemn the utterly disgraceful conduct of the appellant Ramesh. Looking to the age and the

surrounding circumstances, we do not find it to be a case falling under the category of 'rarest of rare case.' Thus, we are not inclined to confirm the death sentence awarded. However, we adopt the course provided by the Apex Court in recent decision rendered in *Shri Bhagwan v. State of Rajasthan* (8). The Court observed:

'In *Laxman Naskar (LIFE CONVICT) v. State of W.B. and Anr.* (9), after referring to the decision of the case of *Gopal Vinayak Godse v. State of Maharashtra* (10), the Court reiterated that sentence for 'imprisonment for life' ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence under the Prison Rules but such remissions in the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant Rules, a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose.'

46. Consequently, the Murder Reference made by the learned Additional Sessions Judge is rejected. We find no merit in the appeal filed by appellants Ramesh and Suraj and, therefore, they are also rejected. The conviction of the appellants under Section 302, 294/397 IPC is upheld. The sentence of death awarded to appellant Ramesh is commuted to imprisonment for life. On the point of sentence, the case of appellants Ramesh and Suraj is distinguishable. Appellant Ramesh has taken advantage of his position of confidence and betrayed the faith of his master. Thus, we further direct that appellant Ramesh shall not be released from prison until he has served out at least twenty years of imprisonment including the period already undergone by him. Thus, his case shall not be considered for permanent parole before the expiry of 20 years. The sentence awarded to appellant Suraj shall remain intact. They will serve out the remaining part of the sentence.

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