

# **Gulzar Alishri Raj Mohammad And Anr vs State Of Himachal Pradesh on 21 October, 1997**

**Bench: M. K. Mukherjee, K. T. Thomas**

PETITIONER:

GULZAR ALISHRI RAJ MOHAMMAD AND ANR.

Vs.

RESPONDENT:

STATE OF HIMACHAL PRADESH

DATE OF JUDGMENT: 21/10/1997

BENCH:

M. K. MUKHERJEE, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

WITH Criminal Appeal No. 658 of 1996 J U D G M E N T Thomas J.

Three brothers were charged for implementing a designed criminal conspiracy for elimination of one who was their bete noire. The session court and the High Court concurrently found them guilty of Section 120B and Section 302 read with Section 34 of the Indian Penal Code and consequently they were convicted and sentenced to undergo imprisonment for life besides payment of some fine. These appeals, by special leave have been filed by the aforementioned three brothers.

The person who was murdered in pursuance of the criminal conspiracy - Tara Chand - was the factotum of Jai Paul (PW- 13) with whom appellants had scores to settle for long. Prosecution case, briefly, is that on the morning 9.5.1990 the three appellants had a dig at Smt. Kiran Chaudhan (wife of Jai Paul) and it resulted in the initiation of a proceeding under Section 107 of the Code of Criminal Procedure against them. Appellants were infuriated by it and the acerbity between the two factions got aggravated further. At about 6.00 p.m. the three appellants together proceeded to a glade situate near a jungle where deceased Tara Chand was working and showered blows on him with gandasi and chhura (both cutting weapons). The victim made a loud cry which attracted the

attention of some people in the proximity who rushed to the spot, but in the meanwhile the assailants took to their heels towards the jungles. Those who reached the spot found Tara Chand lying dead in a pool of blood.

As there was no eye-witness for the murder, the prosecution had to rest on circumstances alone for proving that appellants have murdered Tara Chand. Sessions Court and the High Court found, in one accord, that the circumstances have concatenated into a complete chain pointing unerringly to the complicity of the appellants in the murder of Tara Chand.

There was no dispute that Tara Chand was murdered on the evening of 9.5.1990 at the place of occurrence mentioned by the prosecution. The post-mortem examination conducted on the body of Tara Chand revealed that he had a number of incised injuries, fracture, of ribs, and some stab wounds. One of the stab injuries had penetrated into the abdominal cavity. Another stab wound plunging through the second and third intercoastal space (right side) had caused a cut on the peritoneum. It is clear that deceased was the victim of a murderous attack inflicting many blows with cutting weapons.

The main circumstance found by the two Courts are the following: (1) appellants were sore with Tara Chand for his role as goonda of Jai Paul, (2) The three appellants were found proceeding towards the place of occurrence just a few minutes before the occurrence. PW 6-A (a clerk attached to the post office of Nahan) saw the three appellants during the evening and later PW-6A heard about the murder of Tara Chand; (3) PW4 a boy aged 13 saw the appellants sitting on the open field near the place of occurrence at about 5.30 p.m. and a few minutes later PW4 heard a cry "Hai Ram mar diya" (Oh Go, I am killed); (4) PW2 Ram Singh heard the same cry from near the place of occurrence and the witness ran to the spot and saw the three appellants running towards jungle area and Tara Chand lying dead in a pool of blood; (5) A1 - Raj Mohammad told the investigating officer, during interrogation, that he had concealed a gandasi inside the bush. When he was taken to that place he took out P2- gandasi from the concealed place. Likewise second accused, when interrogated, told the investigating officer that he had concealed the knife in the jungle and when he was taken to that place he took out P3-chhura from beneath the growth of the jungle; (6) that the gandasi and chhura were subjected to chemical tests in the Forensic Science Laboratory, and blood was found sticking on both the weapons.

Learned counsel contended that there is real dearth of evidence to prove that there was any motive for the appellants to target Tara Chand, for, their grouse was only towards jai Paul (PW13). Learned counsel contended that it was most unlikely that appellants would have turned against the deceased who was only a body guard of Jai Paul.

We have come across, in the evidence, that some letters have been seized 8.4.1990 and it was written by A1-Raj Mohammad to A2-Niaz Ali. In that letter mention has been made of some incident which took place on 25.3.1990. The letter contains a request to the addressee to come home on leave with a weapon. Ex. PMM is a petition addressed by A1 to the Chief Minister of Himachal Pradesh on 2.5.1990. A1 has mentioned in it that he and his family were suffering from the atrocities perpetrated by Tara Chand at the behest of PW13. Ex. PW.13B is a letter written by Niaz Ali to Raj

Mohammad (A1) on 4.4.1990. In the petition a reference was made to some acts of the deceased including pelting stones at the house of the accused.

If those letters are genuine, no doubt, they would reflect the mind of A1 and A2 towards the deceased. PW 20 (ML Sharma), Government Examiner on questioned documents, after comparing the hand-writing in the said letters gave an opinion that both were written by the accused. An attempt was made by the accused, through the evidence of DW1 (NK Jain who claimed to be an expert in the science of hand- writing) to show that opinion of the Government Examiner is basically faulty. High Court has observed that "there is a natural tendency on the art of an expert witness to support the view of the person who called him" and preferred the opinion of PW 20-ML Sharma. The said observation of the High Court cannot be downstaged, for, man so called experts have shown to be remunerated witnesses making themselves available on hire to pledge their oath in favour of the party paying them.

It must be remembered that expert evidence regarding hand-writing is not the only mode by which genuineness of a document can be established. The requirement in Section 67 of the Evidence Act is only that the handwriting must be proved to be that of the person concerned. In order to prove the identity of the hand-writing any mode not forbidden by law can be resorted to. Of course, two modes are indicated by law in Sections 45 and 47 of the Evidence Act. The former permits expert opinion to be regarded as relevant evidence and the latter permits opinion to be regarded as relevant evidence and the latter permits opinion of any person acquainted with such hand-writing to be regarded as relevant evidence. Those and some other provisions are subsumed under the title "opinion of third persons, when relevant". Opinions of third persons, other than those enumerated in the fasciculus of provisions, would have been irrelevant. Among the permitted opinions those mentioned in Section 45 and 7 are also included. So it cannot be said that identity of hand-writing of a document can be established only by resorting to one of those two sections. There can be other modes through which identity of the hand-writing can be established. Citing an example, if a letter is seized from the possession of 'A' and the letter contains the name of the sender as well as the name of the sendee and if such sendee happens to be 'A' himself, those circumstances even without resorting to the mode indicated in Sections 45 and 47 of the Evidence Act, would be sufficient to draw an inference that the author or even scribe of that letter is the sender and 'A' is the sendee of it.

Reference can be made to two decisions of at three judge bench of this Court. First is Ram Chandra vs. State of UP [AIR 1957 SC 381] wherein authorship of some questioned letters has been found on the strength of "various items of external and internal evidence." The same three judge bench has observed in Mubarak Ali Ahmed vs. State of Bombay [AIR 1957 SC 857] thus:-

"The proof of the genuineness of a document is proof of the authorship, of the document and is proof of a fact like that of any other fact. The evidence relating thereto may be direct or circumstantial. It may consist of direct evidence of a person who saw the document being written or the signature being affixed. It may be proof of the handwriting of the contents, or of the signature, by one of the modes provided in Ss. 45 and 47 of the Indian Evidence Act.

It may also be proved by internal evidence afforded by the contents of the document. This last mode of proof by the contents may be of considerable value where the disputed document purports to be a link in a chain of correspondence, some links in which are proved to the satisfaction of the Court. In such a situation the person who is the recipient of the document, be it either a letter or a telegram, would be in a reasonably good position both with reference to his prior knowledge of the writing or the signature of the alleged sender limited though it may be, as also his knowledge of the subject-matter of the chain of correspondence, to speak to its authorship."

We find much support from the aforesaid observations to formulate the legal position that the modes of proof envisaged in Sections 45 and 47 of the Evidence Act are not exhaustive for proving the genuineness or authorship of a document.

In this case Ex. PW 20/B letter was taken into custody from the possession of A1 - Raj Mohammad. It is ostensibly a letter written by his brother A2 Niaz Ali the contents whereof are seemingly matters within the personal knowledge of those persons. From those internal circumstances the Court can justifiably reach a conclusion that the letter was written by A1 (Raj Mohammad) to his brother Niaz Ali (A2).

That apart, A1 (Raj Mohammad) has not disputed his authorship of Ex.PMM petition which was presented to the Chief Minister of Himachal Pradesh. The contents of the petition would unmistakably point to the fact that Tara Chand was considered a nightmare to the family of the appellants. Therefore, we unhesitatingly agree with the finding of the two courts that appellants had sufficient motive as against the deceased.

Learned counsel contended that as PW2 found the deceased lying dead an inference can be drawn that he would have reached the place only much after the occurrence. This contention is based on the premise that the injuries sustained by the deceased would not have resulted in his instantaneous death. It true that PW2 said in his evidence that he found the deceased lying dead in a pool of blood. Such an impression need not be a clinically correct- observation. It is possible that deceased would have been lying unconscious and was nearing death, but PW2 would have taken it for granted that he had reached his end when he observed the still lying body surrounded by a carmine background. In this context we kame particular note of one incised wound on the parietal region just left to the midline which the doctor found on the dead body during autopsy. That injury would have rendered the victim to suddenly go into unconscious stage and it was quite possible that when PW2 reached the spot he would have felt that Tara Chand had already died. We are, therefore, not persuaded to reject the evidence of PW2 on that score alone.

Learned counsel contended that since blood found on the gandasa and chhura was not identified as human blood there is no utility with the evidence relating to the recovery of the weapons. The important aspect concerning recovery of the weapons is

that it renders the statements made by A1 (Raj Mohammad) and A2 (Niaz Ali), to the police investigating officer admissible in evidence. Both of them had stated to the police separately that he concealed the respective weapon at the place wherefrom it was recovered. Section 27 of the Evidence Act renders such statement of the accused admissible in evidence, whether it amounts to confession or not, but only to the extent it distinctively relates to the fact discovered. So the incriminating circumstance in this case is not merely that a gandasa and a chhura were disintered by the police but that those accused persons admitted to the police that such weapons were concealed by them at those places.

The circumstances narrated above when put together would undoubtedly point to the guilt of A1 and A2. But those circumstances are not sufficient to complete a chain as against A3. In this context we point out that PW4 (Sanjeev Kumar) did not see A3 (Gulzar Ali) at all when he saw the other two accused sitting near the place of occurrence. The only circumstance made against A3 in that PW2 Ram Singh saw him also running towards the jungle, besides the motive established. But those two circumstances alone are not enough to conclusively say that A3 (Gulzar Ali) had also participated in the murder of the deceased.

Consequently the conviction and sentence passed on him are liable to be set aside.

In the result, we dismiss the appeal filed by appellant Raj Mohammad and appellant Niaz Ali but we allow the appeal filed by appellant Gulzar Ali and accordingly we set aside the conviction and sentence passed on him and we acquit him. We direct that appellant Gulzar Ali be set at liberty forthwith unless he is required in any other case.