

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : August 27, 2014*
Judgment Pronounced on : September 01, 2014

+ **CRL.A.827/2014**

MOHD.MUSTKIM ANSARI Appellant
Represented by: Ms.Nandita Rao, Advocate

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP
Insp.Rajesh Kumar, SHO/Begum
Pur and SI Mahabir Prasad

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. HC Anand Prakash PW-15 was the duty officer from 8:00 AM to 4:00 PM at PS Begumpur on April 27, 2012. At 9:48 AM he received information from the police control room that foul smell was emanating from a house in Rajiv Nagar, Begumpur, Delhi. He made an entry No.29B, Ex.PW-15/A in the daily diary. He handed over a copy of the said daily diary entry to Ct.Vimal Kumar PW-20 to be handed over to SI Chetan PW-24. SI Chetan left the police station accompanied by Ct.Vimal and Ct.Harish (not examined) and reached House No.A-82A, Rajiv Nagar, Begumpur, Delhi and found the door of a room in the inner side of the house locked. Around same time Insp.Rajesh Kumar PW-27 posted as ATO, PS Begumpur also received information of foul smell

emanating from the room and even he proceeded to the place in the company of HC Surender PW-21, Ct.Anil PW-18 and Ct.Rajesh (not examined). Directed by Insp.Rajesh Kumar SI Chetan broke the lock of the room and as the seven police officers entered inside they found the dead body of a lady under the takhat with hands and feet tied with a cloth and a chunni tied around the neck. The body had decomposed. Foul smelling liquid was oozing from the body. Rehana had been killed in the room where she resided with Mustkim Ansari – the appellant.

2. Crime team was summoned and photographs of the scene of the crime were taken. The body was seized and sent for post mortem.

3. The post mortem of the dead body of Rehana by Dr.Manoj Dhingra PW-10 on May 01, 2012, as per the report Ex.PW-10/A guides us that Rehana had died on April 25, 2012, the exact time being difficult to ascertain, but certainly at any hour of April 25, 2012. The cause of death is cerebral damage due to asphyxia consequent to strangulation.

4. Insp.Rajesh Kumar recorded the statements of Shankar Lal PW-1, residing in the same building as a tenant under the landlord Surender, Master Amjad Mia PW-2 (son of Mustkim Ansari and the deceased Rehana), Surender Singh Yadav PW-5, the owner of the house, Khushboo Nisa PW-6 the cousin of Rehana and her husband Alauddin PW-8. As per all Mohd.Mustkim was present in his room on April 25, 2012.

5. As per Khushboo Nisa PW-6, the sister of Rehana mobile number 9958585032 was of Mustkim Ansari. Call record details accessed by Insp.Rajesh Kumar from the service provider Airtel revealed to him that said number was active till April 19, 2012 on a mobile set, and with reference to the IMEI number thereof the handset was found to be used on mobile number 9560937512. It was further noted that on April 23,

2012 the mobile number 9958585032 was active in the area of Begumpur till the morning of April 25, 2012. A number of calls were made from the mobile number 9958585032 to mobile number 9891532559. Insp.Rajesh Kumar rang up said number and the receiver of the call disclosed his name as Amar Nath PW-9. He told Insp.Rajesh Kumar that mobile number 9560937512 was that of Mohd.Mustkim Ansari. He further told Insp.Rajesh Kumar that on April 26, 2012 Mustkim had told him that he had murdered his wife and was proceeding to Bihar.

6. Insp.Rajesh Kumar obtained the call details records and tower locations of the mobile number 9958585032 and 9560937512 as also the ownership document of the subscribers from the service provider Bharti Airtel. He also obtained the ownership documents of the mobile number 9891532559 from the service provider Idea Cellular.

7. Further investigation was taken over by Insp.C.L.Meena PW-23 who proceeded to village Pachgaon in Bihar along with HC Narender PW-13, Ct.Rajesh (not examined) and Ct.Naushad (not examined). SI Maheshwar Paswan PW-14 of PS Simrah joined Insp.C.L.Meena on request for local police assistance being made available. Mohd.Mustkim Ansari could not be located in his house. He was searched. Somebody informed about his presence. On May 14, 2012 Mohd.Mustkim Ansari was arrested.

8. Statement of Vakil Miyan PW-3, Rehana's brother and Idris PW-4, Rehana's father were also recorded.

9. Mustkim Ansari claimed that he had left for his village on April 23, 2012 to attend the engagement function of the daughter of one Tarabul Ansari.

10. Thus, it would be apparent that fate of Mustkim Ansari would depend upon the fact whether he could successfully establish alibi

because he did not dispute his marriage with the deceased and that the place where his wife was murdered was their matrimonial home. If alibi fails, his conduct of absconsion would be highly incriminating.

11. Thus, it would be no use to note the testimony of Ct.Anil PW-18, Ct.Vimal PW-20, HC Surender Pal PW-21, SI Chetan PW-24 and Insp.Rajesh Kumar PW-27 regarding recovery of Rehana's dead body from the room in question inasmuch as Mohd.Mustkim does not dispute that Rehana was his wife who died in the room which was their matrimonial house. We do not note evidence of formal witnesses concerning registration of the FIR, seizure of the dead body, seizure of exhibits from the room, conduct of inquest proceedings, identification of Rehana's dead body, preparation of the site plan etc. because nothing turns thereon in view of the fact that Mohd.Mustkim admits as aforenoted that he was Rehana's husband and that his wife died in the room which was their matrimonial home and her dead body was recovered in a decomposed condition in the morning of April 27, 2012.

12. At the trial Pawan Singh PW-22 proved that the SIM card pertaining to mobile number 9891532559 was issued to one Shyam Prasad Khevar resident of P-62, Budh Vihar, Delhi. He proved the call record details Ex.PW-22/C of the said mobile number from April 01, 2012 to May 31, 2012. Chandershekhar PW-26 proved that the subscriber of mobile number 9958585032 was one Ram Prakash and that of the mobile number 9560937512 was one Rajiv. He proved the call record details from April 01, 2012 to April 30, 2012 for the two numbers being Ex.26/C and Ex.26/D.

13. Amar Nath PW-9 deposed that he and Mustkim Ansari had studied together in the village school and had worked together for rubbing and polishing stones. He deposed that on April 25, 2012 at about 8:00 AM

Mustkim Ansari had enquired from him about trains going to Bihar from Delhi. Next day on April 26, 2012 at about 7:00 PM he had received a call on his mobile number 9891532559 from Mustkim who spoke from the number 9560937512 and told him that he was leaving for Bihar after having murdered Rehana and when he asked why he did so Mustkim Ansari replied that it was no use now to ask him the question.

14. Shankar Lal PW-1, living in a room in building No.A-82A, Begumpur deposed that Mustkim Ansari was residing with his wife Rehana and son Amjad in a room adjacent to his. Mustkim Ansari was working as a stone rubber and used to consume alcohol at 10:00 PM on April 24, 2012 Mustkim and Rehana were present in their room. In the morning of April 25, 2012 he saw Rehana washing utensils at the door of a room when Mustkim Ansari was also present. He left for work at 10:00 AM. On April 27, 2012 foul smell was detected emanating from the room. He informed the landlord and the neighbours. Police was informed. Police came and broke open the door of the room. Rehana was found dead behind the takht. Her hands and legs were tied. Photographs of the spot were taken. Amjad, Khushboo and her husband Alauddin came to the spot.

15. Shankar Lal was cross examined and we find that he has withstood the cross examination.

16. Amjad PW-2, aged 6 years when he deposed in Court on October 10, 2012 the son of Mustkim Ansari and the deceased deposed that after consuming alcohol his father used to beat his mother and him saying that I was not his son. That two days before he saw his mother's dead body. His father gave him ₹40/- and told him to go to his maternal aunt's house at 9:00 AM. He went to Khushboo – his mausi's house. His father told him that he wanted to buy clothes and purchase medicine for his mother

and thereafter would be going to the village. When he returned to his house in the evening the door was locked. He slept in his neighbour's house. His house was locked even in the morning so he went to his aunty's house. Next day he saw the dead body of his mother.

17. The cryptic cross examination of the child witness has not even attempted to dent the testimony of the child witness.

18. Surender Singh Yadav PW-5 the owner of House No.A-82A, Begumpur deposed that there were five rooms in the house and Mustkim Ansari was a tenant in one room where he resided with his wife and son. He had seen Mustkim Ansari at the door of his room on April 25, 2012 in the morning when his wife was washing utensils. He deposed that on being informed that foul smell was emanating from the room where Mustkim Ansari resided with his family he reached the spot and in his presence the police broke open the lock and they found Rehana lying dead beneath the takht with her hands and feet tied.

19. The testimony of Surender Singh Yadav has not been discredited during cross examination.

20. Khushboo Nisa PW-6 corroborated the testimony of her nephew Master Amjad, with the only variation that when Amjad came to their house on April 25, 2012 in the morning with ₹40/- and returned to his house in the evening, since the door of his house was locked he came back to her house. (As noted above as per Amjad he slept in the room of a neighbour). She deposed that Amjad told her when he came to her house on April 25, 2012 that his father has given him ₹40/- and his parents has gone to purchase clothes and medicine. She deposed that in the morning of April 27, 2012 they were informed of her sister being found dead in the room where she resided with her husband. She deposed that her sister was married to Mustkim Ansari 14 years ago. Addicted to

alcohol Mustkim Ansari used to beat his wife. For five or six years Mustkim was away to Bombay and during this period Rehana resided with her parents and had a love affair with someone. She became pregnant. The pregnancy was terminated. When Mustkim Ansari returned to the village, the village panchayat brokered a settlement. Mustkim Ansari brought Rehana to Delhi but continued to beat her.

21. We find that Khushboo Nisa has withstood the test of cross examination.

22. Alauddin PW-8 husband of Khushboo Nisa has deposed in sync with his wife and he too has withstood the test of cross examination.

23. Vakil Miyan PW-3 and Idris PW-4, the brother and father respectively of Rehana deposed in sync and pithily recorded stated that Rehana and Mustkim were married 14 years ago. Mustkim used to consume alcohol and beat Rehana. Rehana returned to her parental house when Mustkim left for Bombay. After a few years he came to the village and the panchayat brokered a settlement which was recorded in writing being Ex.3/C and thereafter Rehana joined the company of her husband.

24. Mohd.Mustkim claimed that he had left for his village to attend the engagement function of the daughter of Tarabul Ansari DW-1. He led defence evidence by examining Tarabul Ansari DW-1 and Dinesh Khevar, the surpunch of the village in question as DW-2, both deposing that on April 23, 2012 Mohd.Mustkim Ansari was in the village and remained there till May 13, 2012 when he was arrested.

25. Disbelieving the two defence witnesses and believing the testimony of Shankar Lal, Master Amjad, Surender Singh Yadav, Khushboo Nisa and Alauddin, and finding corroboration from the call record details of the mobile numbers 9560937512 and 9891532559 that the two numbers were in contact in the morning of April 25, 2012 and the

cell tower Id location of the mobile number 9560937512 showed the number in Begumpur area, the learned Trial Judge has held that prosecution has successfully established that Mustkim Ansari was in his room in the company of his wife in the morning of April 25, 2012. He sent his son with ₹40/- to the house of Khushboo Nisa. Since plea of alibi failed the presumption of guilt had to be raised against Mustkim Ansari. The learned Trial Judge has believed Amar Nath PW-9 that Mustkim Ansari made an extra judicial confession to him. With respect to the testimony of Master Amjad PW-2 and Khushboo Nisa PW-6 the learned Trial Judge has found a motive for the crime being Mustkim Ansari doubting the fidelity of his wife because in the past she had conceived through another person and he even doubted whether Master Amjad was born through his loins.

26. Arguing on behalf of Mustkim Ansari, learned counsel urged that the testimony of Pawan Singh PW-22 and Chandershekhar PW-26 would evidence that mobile number 9891532559 belonged to one Shyam Prasad and thus claim of Amar Nath that he was the owner of the mobile number is incorrect. Learned counsel urged that the mobile number 9560937512 belonged to one Rajiv as per the testimony of Chandershekhar. Thus, Amar Nath's claim that Mustkim spoke to him on his mobile number 9891532559 through mobile number 9560937512 is unbelievable. Thus, the extra judicial confession fails. Discrediting the testimony of Amjad, learned counsel pointed out the contradiction in what Amjad said and what Khushboo Nisa said regarding the place where Amjad slept in the night of April 25, 2012 : whereas Amjad claims that when he returned to his house in the evening of April 25, 2012, since the door was locked he slept in the house of the neighbour, as per Khushboo Nisa Amjad returned to her house and slept that night in her house.

27. It may be true that the testimony of PW-22 and PW-26 establishes that Amar Nath was not the registered subscriber of the mobile number 9891532559 and the testimony of PW-26 establishes that Mustkim was not the registered subscriber of the mobile number 9560937512, but we find that during cross examination Amar Nath's testimony of he being the owner of the mobile number 9891532559 and that he used to speak to Mustkim on the mobile number 9560937512 has not even been challenged. The trial was not in relation to a fact in issue as to who was the registered proprietor or subscriber of the two mobile phone numbers. The fact in issue was whether the prosecution has proved that Mustkim Ansari spoke to Amar Nath as per the claim of Amar Nath from mobile number 9560937512 with Amar Nath being in possession of the mobile number 9891532559. But keeping in view the fact that the prosecution has not even bothered to trace Shyam Prasad and Rajiv, whose testimony would have thrown light as to who were in possession of the SIM cards pertaining to the said two mobile phones, in the peculiar facts of the instant case we overlook the incriminating evidence emanating from the call record details of the two mobile phones and the cell Id locations.

28. But, the testimony of Shankar Lal PW-1, Master Amjad PW-2 and Surender Singh Yadav PW-5 establishes that in the morning of April 25, 2012 Mohd.Mustkim was in his room in the company of his wife. The testimony of Master Amjad and that of Khushboo Nisa PW-6 and her husband Alauddin PW-7 establishes that in the morning of April 25, 2012 Mustkim Ansari gave ₹40/- to his son Amjad and told him to go to the house of Alauddin and Khushboo. He told Amjad that he and the deceased would be going to the market to purchase clothes and medicines. The minor discrepancy of Amjad saying that when he returned to his house in the evening of April 25, 2012, on seeing a lock on the door

he slept in the house of the neighbour and Khushboo deposing that Amjad returned to her house to sleep that night, is too trivial a discrepancy to discredit the two. It has to be kept in mind that Amjad was barely 5 years and 6 months of age when the incident took place. He deposed after 6 months. The child confusing of having slept in the neighbour's house and not his maternal aunt's house is in the realm of reality and said confusion cannot discredit the young lad who was still an infant. Nobody saw Mohd.Mustkim and his wife : the deceased thereafter. Mohd.Mustkim had obviously absconded after he strangled his wife. He put the lock on the door. His plea of alibi having failed, the only conclusion would be : where the presence of a husband and wife is proved in the matrimonial house and the wife is found murdered and the husband has absconded, unless the husband explains how his wife died, the inference of guilt is the only conclusion which remains to be drawn. There is a motive for the crime which has been brought out by the learned Trial Judge and has been noted by us in paragraph 25 above. We agree with the said finding because it flows from the testimony of Master Amjad and Khushboo Nisa.

29. The appeal is dismissed.

30. Two copies of the decision be sent to the Superintendent Central Jail Tihar, one for his record and the other to be supplied to Mustkim Ansari.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

September 01, 2014/mamta