

In the High Court of Punjab & Haryana at Chandigarh.

CRA-D-263-DB-2011
Date of decision: 17.07.2017

Usman Appellant.

VS

State of Haryana Respondent.

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Sarfraj Hussain, Advocate
for the appellant.

Mr. Praveen Bhadu, Asstt. A.G.Haryana.

MAHABIR SINGH SINDHU,J.

Sole appellant-Usman has filed the present appeal against the impugned judgment of conviction dated 09.02.2011 and order of sentence dated 10.02.2011 passed by learned Additional Sessions Judge, Panipat, vide which he was convicted and sentenced in the following terms:-

Offence(s) U/s	Sentence Awarded
364 IPC	<i>Convict was sentenced to undergo rigorous imprisonment for a period of seven years and was also imposed a fine amounting to ₹5,000/- . In default of payment of fine, he was to further undergo rigorous imprisonment for a period of six months.</i>
302 IPC	<i>Convict was sentenced to undergo rigorous imprisonment for life and was also imposed a fine amounting to ₹10,000/- . In default of payment of fine, he was to further undergo rigorous imprisonment for a period of one year.</i>

Offence(s) U/s	Sentence Awarded
201 IPC	<i>Convict was sentenced to undergo rigorous imprisonment for a period of five years and was also imposed a fine amounting to ₹3,000/- . In default of payment of fine, he was to further undergo rigorous imprisonment for a period of four months.</i>
<i>All the sentences were ordered to run concurrently.</i>	

Brief facts of the case are that complainant-Ashrat Ali (PW3) gave an application (Ex. PW3/A) to the SHO, P.S.Chandni Bagh, Panipat and English translation of the same is as under:-

“ I am resident of village Nanhera, District Bijnor (U.P.) and for the last about 8 years, I was residing with my family in street No.7, Baljeet Nagar, Panipat and now residing as a tenant in Hali Colony and used to operate Khaddi (weaving) Machine. My nephew Gulam Navi @ Sonu, son of Nazim, Caste Ansari, Muslmaan, R/o Phoolsanda, P.S.Nehtore, District Bijnor (U.P.) used to reside with me for the last one year and he also used to operate the machine. About two months ago, my nephew Gulam Navi @ Sonu had enticed away Mehrunisa D/o Kosar Gujjar, Muslmaan, who used to live in Dhoop Singh Nagar. But on the next day, he came back with the girl and handed her over to her parents. Due to that reason, the family members of Kosar nursed a grudge against my nephew and they wanted to kill him. About 15 days ago on 14.12.2008, Kosar, Usman and Mehrab kidnapped my nephew with an intention to kill him.

Action be taken against them. Mobile number of my nephew Sonu @ Gulam Navi is 9050456628. My nephew has been kidnapped from Dhoop Singh Nagar.”

On the basis of above complaint, an FIR (Ex. PW-18/A) was registered. The police investigated the matter and during the course of investigation, Usman was arrested and he made a disclosure statement (Ex.PW-3/B) to the effect that he alongwith his brother-in-law (*Jija*) and friend Raju abducted Gulam Navi @ Sonu (hereinafter referred as deceased) on 14.12.2008 and committed murder by pressing his neck with the belt and his dead body was thrown on Malikpur side of small canal and which can be recovered after demarcation of the place and in pursuance thereof, he got recovered the dead body. Thereafter, on 01.01.2009, again the disclosure statement Ex.PW3/C of the appellant was recorded and he stated that on 30.12.2008 and 31.12.2008, he had made disclosure statements but did not disclose some facts and stated that he alongwith his brother-in-law, namely, Dilshad, R/o Kandhia and his friend Raju made a joint plan on 14.12.2008 at Dhoop Singh Nagar and had taken away deceased on the pretext of going to a movie in a theater at Kandhla (UP) and after watching the show from 3:00 to 6:00 P.M., they all three brought the deceased at a vacant place near small canal at Kandhla and tied both his hands with shirt and killed him by pressing his neck with belt and his dead body was thrown into the canal and got recovered the belt, mobile phone and SIM.

After completion of investigation, report under Section 173 Cr.P.C. was submitted against accused Usman and Dilshad only, whereas, Kosar and Mehrab were found innocent by police and their names were kept

in column No.II. Thereafter, the case was committed for trial and learned trial Court framed charges under Sections 364/34, 302/34 and 201/34 IPC against accused Usman and Dilshad on 17.04.2009; but both the accused pleaded not guilty and claimed trial.

In order to prove the case, the prosecution examined as many as 18 witnesses and brought on record various documents. Statements of accused were got recorded under Section 313 Cr.P.C. and no defence witness was produced.

After taking into consideration the material available on record, learned trial Court convicted the appellant under Sections 364, 302 and 201 IPC; but acquitted his co-accused Dilshad by giving him the benefit of doubt.

It is argued by learned counsel for the appellant that learned trial Court has wrongly relied upon the statements of Naushad (PW1) as well as Ashrat Ali (PW3) and did not appreciate the statement of Aizaz (PW14) properly. He has also argued that the alleged disclosure statement dated 01.01.2009 of the appellant was not supported by Ashrat Ali (PW3) and, therefore, the same is of no consequence. He has also argued that there are cuttings on the disclosure statement which is a clear manipulation by the prosecution. He further argued that motive in this case is not proved and there are lot of serious infirmities and contradictions in the present case and the appellant is not at all connected with the commission of offence. He also argued that on the same set of evidence, co-accused of the appellant, namely, Dilshad has been acquitted and, therefore, the appellant also deserves the same treatment.

On the other hand, learned State counsel has vehemently

opposed the argument of learned counsel for the appellant by submitting that the case is duly proved by prosecution beyond reasonable doubt against the appellant and no interference is required by this Court in the impugned judgment dated 09.02.2011 and order of sentence dated 10.02.2011 and thus prayed for dismissal of the appeal.

Heard learned counsel for the parties and perused the record carefully.

Undisputedly, the criminal law was set into motion in this case on the basis of complaint dated 29.12.2008 (Ex. PW3/A) made by Ashrat Ali (PW3), who is maternal uncle of deceased and the appellant alongwith Kosar as well as Mehrab were named as accused. PW-3, while appearing before the learned trial Court, turned hostile and did not support the prosecution case except the admission of his signatures at point "A" on Exhibit PW3/A stating that the same were obtained on blank paper. Even during cross-examination, he totally resiled and stated that he did not submit any application to the police. This witness stated during cross-examination that dead body of the deceased was found from *kachi nehar (unlined canal)* within the revenue area of Kandhla on 29.12.2008 at about 8:00 A.M. He has also admitted in the cross-examination that after receiving information from unknown persons of Kandhla regarding dead body of deceased, they reached there and found the dead body which was lying there. He further stated that they came to Panipat and informed the police and then only the police went there. During his cross-examination, he specifically denied the factum of interrogation of Usman and the disclosure statement Ex. PW3/B. However, he admitted his signatures at point "A" on the disclosure statement; but again stated to be obtained by police on blank paper. Ashrat

Ali (PW3) has denied the interrogation as well as disclosure statement dated 01.01.2009 but admitted his signature at point "A". This witness has specifically stated during cross-examination that on 01.01.2009, Usman had not got recovered anything in his presence in pursuance of the disclosure statement; nor any memorandum of recovery was prepared in his presence. He has denied the suggestion of the prosecution that he has compromised the matter with the accused outside the Court in order to save him being his relative. When cross-examined by defence counsel, he stated that on 29.12.2008, there was a news item published in the news paper regarding the dead body.

Naushad (PW1) deposed before the learned trial Court that on 14.12.2008, Usman, Mehrab, Dilshad and Kosar abducted the deceased from Baljeet Nagar, Panipat and he informed his brother Aizaz about the occurrence and they went to Baljeet Nagar to trace the deceased; but could not find him. He has also deposed that on 30.12.2008, Usman (appellant) got recovered the dead body of deceased from *kachi nehar (unlined canal)*, Kandhla which was taken into possession by police vide memo Ex.PW1/A. During the cross-examination, this witness has deposed that deceased was slapped by the abductors; but further stated that he was not abducted in his presence. This witness also stated that he did not try to report the matter to the police and the deceased was the son of his maternal aunt (*Mausi*). PW1 has admitted during cross-examination that they proceeded from Panipat to *kachi nehar*, Kandhla on 29.12.2008 at about 8:00 A.M by three vehicles and they were total 10-15 in number and he told about the incident to Ashrat Ali (PW3) on the same day.

Aizaz (PW14) has deposed that on 14.12.2008 (Sunday), his

brother Naushad (PW1) came to him and told that Usman, Raju and Dilshad had allured the deceased on account of having affair with daughter of Kosar; but during his cross-examination he stated that on 14.12.2008, Naushad (PW1) did not meet him and voluntarily stated that Naushad (PW1) met him on 15.12.2008 in a Panchayat. This witness has further stated that the deceased was also present in the Panchayat. Sarpanch, Nambardar and all residents of village Jalalpur-II were present in the Panchayat which was convened by the deceased. He has also admitted that on 16.12.2008, the deceased had gone for work and he did not see the deceased after 16.12.2008, he also admitted that dead body of the deceased was found on 28.12.2008 near Kairana and, first of all, he alongwith his friend reached there and gave information to the police of Police Station Chandni Bagh, Panipat and the dead body was not identifiable.

Inspector Saifuddin (PW16), who was posted as Inspector/SHO, P.S.Chandni Bagh, Panipat, at the relevant time, deposed that Sub-Inspector-Sukhbir Singh, had handed over to him the file pertaining to this case for further investigation and he prepared the rough site plan of the place of occurrence Ex. PW16/A and recorded the statements of Naushad, Aizaz etc. under Section 161 Cr.P.C. Accused Usman was arrested by him on 30.12.2008 from Baljeet Nagar and after interrogation, accused-Usman suffered disclosure statement Ex. PW3/B and in pursuance of which he got recovered dead body of deceased on 30.12.2008 and the same was taken in custody vide memo Ex. PW1/A.

In this case, there is no eye witness and entire case is based on circumstantial evidence. The allegation in the complaint (Ex.PW3/A) is that on 14.12.2008, Kosar, Usman and Mehrab abducted deceased with an

intention to kill him; but while appearing in the Court, all three material prosecution witnesses i.e. Naushad (PW1), Ashrat Ali (PW3) and Aizaz (PW14) have given the version which makes the prosecution case doubtful.

Aizaz (PW14) has stated during cross-examination that deceased was present in the Panchayat on 15.12.2008 which was convened by the deceased himself in the house of Ashrat Ali (PW3) and this witness has further stated during cross-examination that deceased had gone for work on 16.12.2008. When this witness has candidly stated that on 15.12.2008, the deceased was present in the Panchayat and he had gone for work on 16.12.2008 then the version of the prosecution that he was kidnapped on 14.12.2008 does not seem to be acceptable and the whole story of the prosecution becomes doubtful. The statement of PW14 is to be read in entirety and which goes in favour of the appellant and not supporting the prosecution case. The law is well settled that if the prosecution witness has deposed during trial in favour of the accused then the benefit of the same is to be extended to the accused also. Needless to say that this witness was not even questioned by the prosecution.

Further, Naushad (PW1) is a chance witness and he has clearly stated during cross-examination that the deceased was not abducted in his presence and he has also stated during cross-examination that they proceeded from Panipat to *kachi nehar*, Kandhla on 29.12.2008 at about 8:00 A.M. to identify the dead body. If that is the position, then recovery of dead body on 30.12.2008 in pursuance of disclosure statement Ex. PW1/A is not helpful to prove the guilt of the appellant.

As discussed above, complainant-Ashrat Ali (PW3), turned hostile and he also did not support the prosecution case and he has stated

during cross-examination that dead body of deceased was found from *kachi nehar* within the revenue estate of Kandhla on 29.12.2008 at about 8:00 A.M. PW16 has stated that appellant was arrested by him on 30.12.2008 and as is clear from the testimony of PW1-Naushad that dead body was found on 28.12.2008 and there was a news item published in the news paper on 29.12.2008. Thus, factum of dead body was known to general public on 28.12.2008 itself. Consequently recovery of dead body on 30.12.2008 is also not helpful to the prosecution case.

In view of the discussion made here-in-above, findings of the learned trial Court that appellant had abducted the deceased and has committed his murder and, thereafter, thrown his dead body on Malikpur side of small canal at Kandhla (UP) are based on mis-appreciation of evidence and not sustainable and are thus liable to be set aside. Accordingly, the impugned judgment of conviction and order of sentence are hereby set aside. The appeal is accepted and the appellant is acquitted of the charges against him. He be released from jail forthwith unless wanted in some other case.

(T.P.S. MANN)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

July 17, 2017
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No