

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

% Reserved on: 15<sup>th</sup> May, 2017  
Decided on: 18<sup>th</sup> May, 2017

+ **CRL.A. 460/2015**

UMESH KUMAR CHAUHAN ..... Appellant  
Through: Mr. Pramod Kumar Dubey, Ms.  
Namita Wali and Mr. Akshay Sehgal,  
Advocates.  
versus

STATE ..... Respondent  
Through: Mr. Ravi Nayak, APP for the State.

**CORAM:**  
**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J.**

1. Convicted for offence punishable under Section 302 IPC read with Section 34 IPC, Umesh challenges the impugned judgment dated 26<sup>th</sup> August, 2014 and the order on sentence dated 29<sup>th</sup> August, 2014 awarding him imprisonment for life.
2. Learned counsel for the appellant Umesh contends that even as per the version of PW-6 Naresh Gupta, husband of the deceased, Umesh and the juvenile had worked with him only for 15 to 18 days and half the salary for that period had already been given. Thus the only dispute related to a sum of ₹300/- and no reasonable person would commit a murder for a sum of ₹300/- further which as per Naresh Gupta himself was assured to be given to the sister of Umesh. Though it was the case of the prosecution that Umesh knew about ₹3.50 lakhs lying in the house which were found missing after the

incident however, the said money was not found to be stolen as admitted by Naresh Gupta in his cross-examination. Deposition of Naresh Gupta that ₹10,000/- were missing cannot be relied upon. Thus, the prosecution has failed to prove the motive of Umesh to commit the offence punishable under Section 302 IPC. PW-13 Rajni stated that she spoke to the deceased at 9.30 PM and Umesh along with one boy came to the house of the deceased at 10.00 PM and she got to know about the murder of the deceased only after 11.00 PM when the husband of the deceased came home, thus showing that the deceased was murdered between 10.00 PM and 11.00 PM. However, as per the post-mortem report the deceased died at around 3.30 AM on 16<sup>th</sup> October, 2011. From the alleged location where Rajni claims to have seen Umesh, nobody could have seen a person. The alleged recovery of the bloodstained clothes of Umesh has not been connected to the murder of the deceased because as per the FSL report the result on the clothes was inconclusive. Further the alleged recovery of Mala with the key from the clothes of Umesh is also not connected with the deceased or the offence alleged. Though Rajni stated in her testimony that she did not know the name of the accused however, in the rukka name of Umesh is mentioned though not mentioned in the PCR call. There is a delay of three hours in lodging the FIR. Umesh has been falsely implicated in the above noted case and he be released by setting aside the conviction and order on sentence.

3. Learned APP appearing on behalf of the State on the other hand contends that though the defence of Umesh in the statement under Section 313 Cr.P.C. was that he was not in Delhi at the relevant time and he had gone to native place however, the cell phone record shows his presence in Delhi at Jahangirpuri the place where the offence took place. Further as per

the FSL report, the pant of Umesh recovered at his instance was found to be stained with blood of 'A' group origin which was that of the deceased. Pearl string with key of the deceased was recovered at the instance of Umesh which was duly identified by Naresh Gupta in the test identification proceedings. The prosecution has proved the chain of circumstances beyond reasonable doubt against Umesh and the appeal be dismissed.

4. Learned Trial Court had culled out six circumstances which were required to be proved by the prosecution against Umesh to establish his having committed the murder of Abha Gupta on the basis of circumstantial evidence and the same are noted as under:-

- i. *that the accused and his associate nurtured a grudge against husband of the deceased on account of non-payment of their complete wages and, that the accused and his associate were aware that the husband of the deceased had kept a good cash amount in a box in his room, which acted as a motive to commit the crime;*
- ii. *that one of the neighbourers Ms. Rajni (PW-13) saw the accused and his associate leaving the house of the deceased about the time of murder;*
- iii. *that the mobile locations of the accused reveals that the accused was present within Jahangirpuri area as per the locations of tower at the time of incident;*
- iv. *that the accused and his associate were apprehended from outside Old Delhi Railway Station on 20.10.2011, whereas, they claimed to have left Delhi for their native places;*
- v. *that the accused and his associate, pursuant to their disclosure*

*statements, led to the place of commission of crime, where pointing out memos of crime were prepared; and,*

- vi. *that the accused and his associate, pursuant to their disclosure statements, led to recovery of their respective clothes from Jahangirpuri area which clothes were bearing blood stains, with the same blood group of the deceased, and inside the clothes of accused Umesh, a mala with key which was missing from the neck of deceased was found.*

5. Naresh Gupta deposed that he used to reside with his wife and two children at House No. I-506, First Floor, Jahangirpuri, Delhi. He used to run momos and spring roll rehri at Jahangirpuri. He had kept Umesh and the juvenile as workers who used to help him in preparing momos and spring roll. He used to pay them ₹3,000/- each per month plus food. He stated that he does not remember the date but it was October, 2011 and 5-6 days prior to the murder of his wife, Umesh and the juvenile had demanded money from him on the pretext that they wanted to go to their house for Diwali. Naresh Gupta asked them to take half of the amount at the time of leaving for their house and the rest after coming back. On this, both of them threatened him and stated "*agar abhi pura nahi diya toh baad mein pachtayoge*". He told them to continue working till January, 2012 and thereafter, he would pay them and they agreed to it. On 13<sup>th</sup> October, 2011, both of them again demanded money and told him that they do not want to work with him. He told them that he did not have full amount to pay them, however, he can give them ₹1,700/- each but they demanded ₹2,000/- each. Thereafter, they left saying that remaining amount of their account can be given to their sister or else they will collect it later on from him. On 15<sup>th</sup> October, 2011, he had left

the house around 7:30 P.M. while leaving his wife and children and when he came back around 11:00 P.M., he found his wife Abha lying on the floor smeared with blood while the children were on the bed. After seeing her condition, he became nervous, lifted his wife, took her to the ground floor and requested the landlord to look after his children as he was taking his wife to the hospital. However, the landlord and his wife asked him to put his wife down to check her. They observed that the neck of his wife was slit and they stated "*gala kata hua tha gol sa gadda bana hua tha*". His wife was dead at that time. Thereafter, he made a call at 100 number and also informed his mother-in-law. He further stated that ₹3.5 lakhs from his savings which he had kept for the purpose of purchasing property and loose currency notes amounting to ₹10,000/- were kept by him in a box and the key of the lock of that box was kept by his wife in a mala which his wife used to wear in her neck. Later on, on checking, he found out that the aforesaid money was also missing from his house. During his cross examination, he stated that in case of need of any article, the accused persons used to collect the same from his house. He admitted that despite threat was extended by the accused persons, he kept them on work. Since there was only one room, he and his wife used to have personal talks in the presence of accused persons and they had the knowledge about lying of the huge amount at his house. He stated that only ₹10,000/- were found missing from his house as taken by the accused persons, however, they could not get ₹3.5 lakhs as the same was lying locked in the box. He admitted that the accused persons knew that he had the money however, they were not having knowledge about the place where he had kept ₹3.5 lakhs.

6. To prove that the deceased was last alive till 9.30 PM and was last seen with Umesh and the juvenile, prosecution has examined Rajni who deposed that in the year 2011, she was residing with her brothers at the tenanted house at Jahangirpuri. It was 15<sup>th</sup> October, 2011 and festival of karwa chauth. When she went downstairs to purchase milk, around 9:30 P.M., she had met Abha (deceased) and also had a word with her. After talking to her, she went to her room. Around 10:00 P.M., when she was present on the roof of her tenanted room, she saw Umesh along with one other boy. She saw them while leaving by their back twice. She stated that both of them used to work at the house of the deceased and used to make chowmein, spring rolls, etc. She got to know about the murder of Abha on that very day after the husband of deceased Abha shouted for help. During her cross-examination, she admitted that she was not an eye witness to the murder.

7. Contention of learned counsel for Umesh is that Rajni could not have seen the house of the deceased from the roof of her tenanted room. In the cross-examination, Rajni has not been suggested that she could not have seen Umesh entering the house of the deceased from the roof of her tenanted room. The suggestion was that she was not acquainted with Umesh which she denied and stated that she was staying in the said tenanted room at Jahangirpuri for the last 15 days and Umesh used to come for the work at the house of the deceased. She further stated that her brothers were previously living in the said tenanted room for long time prior to her coming to this tenanted room. In her cross-examination, she clarified that she saw Umesh from roof of her room around 10:00 P.M. and that he used to prepare spring rolls etc. till evening at the house of the deceased and the deceased and her

husband used to help him in preparation. She also clarified that on 15<sup>th</sup> October, 2011 at the time of the incident, husband of the deceased was not present as she had seen him leaving the house at about 7:00 P.M. and had spoken to the deceased at 9:30 P.M. No doubt, Rajni did not know the name of the appellant but she could clearly identify him.

8. A perusal of the statement of Naresh Gupta reveals that he left his house along with the rehri on the 15<sup>th</sup> October, 2011 at 7:30 P.M. leaving his wife and children at home and when he came back around 11:00 PM he found his wife lying smeared with blood on the floor. Seeing the condition of his wife, he became nervous and after lifting her, took her downstairs on the ground floor. He woke up the landlord and requested them to look after the children so that he could take his wife to the hospital. On the landlord and his wife asking, he checked up his wife when it was found that she is no more and he made a call to 100 number. Since at the time PCR call was made, Naresh had not spoken to Rajni, thus name of Umesh does not find mention in the PCR call. He further states that after the police came, they interrogated the other members of the house thus in the rukka name of Umesh is mentioned.

9. Naresh Gupta in his examination-in-chief stated that he used to pay Umesh and Juvenile ₹3,000/- each per month plus food who helped him as workers in preparing the momos and spring rolls which he used to sell on rehri. He stated that after Umesh and the juvenile wanted to leave, a sum of ₹3,400/- was due to him and he had paid ₹2,000/- to them and assured that he would pay them the balance of ₹1,400/- on their return from the village, whereafter Umesh and the juvenile extended threat. No doubt in his cross-examination Naresh stated that initially he thought that ₹3.5 lakhs were

missing however, Umesh could not take away the said amount as the same was lying locked in a box. That does not dilute the proof of motive against Umesh for the reason Naresh in his statement categorically stated that though Umesh and the juvenile did not know the exact place in the house where he was keeping the amount, but they were aware that he had ₹3.5 lakhs in cash which he kept for purchasing a plot. Though Umesh and the juvenile could not take away ₹3.5 lakhs however, ₹10,000/- was found missing from the house. To prove the motive, the case of the prosecution is twofold, firstly that the entire wages were not paid to Umesh and the juvenile and secondly, that they knew that a sum of ₹3.50 lakhs was lying in the house. Though Umesh and the juvenile could not succeed in taking away ₹3.5 lakhs however, the prosecution has proved quarrel and threat for non-payment of balance and taking away of ₹10,000/- from the house of the deceased.

10. Pursuant to the arrest of Umesh, two mobile phones were recovered, one of Nokia having SIM card of Idea No. 875041209 and another mobile of QRUZ which was without a SIM card. After the disclosure statement Umesh led the police party to the DDA Central Store, behind CNG Pump, Mukarba Chowk, where from inside the bushes, he got recovered his blood stained clothes, that is, yellow colour full sleeves T-shirt and navy blue colour pant. In the right side pocket of the pant, one red coloured mala (string) along with one key was found. The same were seized vide memo Ex. PW-14/D and duly sealed. Test identification parade of the red pearl string was got conducted from Naresh Gupta vide Ex.PW-6/D wherein he duly identified the red coloured pearl string with one key tied in it which was duly exhibited before the Court. The said red coloured pearl string with one key therein belonged to the deceased Abha.

11. As per the FSL report Ex. PW-27/B both T-shirt and pants recovered at the instance of Umesh were found to be stained with blood and the blood on the pants was found to be of human origin of 'A' group which tallied with the blood of the deceased.

12. As noted from the evidence of the prosecution, Naresh Gupta, came to his house back with his rehri at around 11 O'clock when he saw his wife in an injured condition, he brought her to the ground floor and pursuant to a PCR call at 11:30 P.M. in the night DD No.49A was lodged at PS Mahindra Park informing about a lady being found in an injured condition from her neck. At 11:38 P.M. in the night on the reaching of the PCR van, a return report is sent stating that a lady's neck has been found slit and she had died at the spot due to bleeding. It also notices that the husband has reached the spot, who had gone for his work. The rukka on the statement of Naresh Gupta had been sent for registration of FIR at 2:30 A.M. after recording the statement of Naresh and the witnesses available at the spot. Hence it cannot be said that there was any delay in registration of the FIR.

13. The defence of Umesh in his statement under Section 313 Cr.P.C. was that he was innocent, had committed no offence, after taking his salary he went to his home town and that on the date of the alleged incident, that is, 15<sup>th</sup> October, 2011 he was not in Delhi. In his statement under Section 313 Cr.P.C., Umesh admitted that he used to work with Naresh Gupta along with the juvenile who used to pay ₹3,000/- per month plus food to him and his associate and that 5-6 days prior to the incident they had demanded their wages and Naresh Gupta only made part payment and refused to give the balance. He also admitted that when Naresh Gupta asked them to work till January, 2012 he agreed to work till Naresh Gupta makes some alternative

arrangement and Naresh Gupta stated that he would make the remaining payment either to his sister or his associate could collect it later. Further in his supplementary statement under Section 313 Cr.P.C. Umesh admitted that Mobile No. 8750451209 was used by him during the period of October, 2011 and it was also recovered after his arrest.

14. In this regard the prosecution has examined Shyam Sunder PW-15 who deposed that 8750451209 was in his name which he had given to Suraj Pal around 1-1½ month prior to 15<sup>th</sup> October, 2011 and Suraj Pal handed over the same to his brother-in-law Umesh Chauhan, the appellant herein and that Umesh Chauhan and the juvenile were residing with Suraj Pal.

15. PW-29 Surender Kumar, Assistant Nodal Officer, Idea Cellular Limited exhibited the call detail record of Mobile No. 8750451209 from the period 15<sup>th</sup> October, 2011 to 20<sup>th</sup> October, 2011 vide Ex.PW-29/A which had earlier also been exhibited as PW-27/F. He also exhibited the certificate under Section 65B of the Evidence Act as Ex.PW-29/D. From the call detail record and the Cell ID chart Ex. PW-27/G the prosecution has proved that the Mobile No. 8750451209 was in the location of Delhi and near the place of occurrence on 15<sup>th</sup> October, 2011 and only on 16<sup>th</sup> to 18<sup>th</sup> October, 2011 it was not in Delhi when again it was in Delhi on 18<sup>th</sup> October, 2011.

16. Umesh examined DW1 Mamta, his sister in this regard who deposed that her brother went to his village on 14<sup>th</sup> October, 2011 in the evening and on 15<sup>th</sup> October, 2011 she observed fast of Karva Chauth when the police entered her room and started inquiring from her. Police took her husband to the police station Mahendra Park and tortured him. Thus she called her brother back from the village and when he reached Jahangirpuri Metro Station red light, he was arrested. In her cross-examination she admitted that

she had not gone to the railway station to see off her brother. She stated that when her husband was taken, neither she accompanied him to the police station nor any neighbours nor any complaint was lodged.

17. It is well settled that if the accused takes the plea of alibi even if not beyond reasonable doubt, he has to prove the same by preponderance of probability. Umesh examined his sister DW-1 who stated that his brother left Delhi on 14<sup>th</sup> October, 2011. She also admitted that she had not seen him travel nor she had gone to the railway station to see him off to the native place. Further the version of DW-1 is belied by the call detail records of Mobile No. 8750451209 which admittedly was being used by Umesh which showed his presence in Delhi near the place of occurrence on 15<sup>th</sup> October, 2011.

18. The post-mortem of the deceased Abha was conducted by PW-17 Dr. Bhim Singh on 17<sup>th</sup> October, 2017 who exhibited his report vide Ex.PW-17/A. He noted the following external injuries on the body of the deceased:

*“Incised wound front of neck 6.5 cm x 2 cm x bone deep up to 5<sup>th</sup> cervical vertebra cutting the tissues, muscles, vessels, trachea and esophagus, tailing on right side.*

*Abrasion 1 cm x 1 cm of left elbow.*

*Abrasion 2 cm x 1 cm back of right shoulder”*

19. Dr. Bhim Singh further opined the cause of death to be due to heamorrhage shock consequent upon the cut throat injury via injury No.1 caused by the sharp edged weapon and sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature. Time since death was approximately 60 hours. He also examined the

weapon of offence, that is, the bloodstained knife recovered from the spot and after examining the same he opined that the injury No.1 was possible from the said knife. As per the FSL report the knife was smeared with the blood of human origin of 'A' group which tallied with that of the deceased.

20. As per the time given in the post-mortem report, the death took place at around 3.30 AM on the 16<sup>th</sup> October, 2011. The time of death given by the doctor is approximate in nature and as noted above, after the husband of the deceased came home he found the deceased dead and at 11.30 PM PCR call had been made and police arrived at the spot. Thus the deceased having died before 11.00 PM on 15<sup>th</sup> October, 2011 cannot be disputed.

21. The Supreme Court in the decision reported as (1955) 2 SCR 570 : AIR 1955 SC 801 Deonandan Mishra v. State of Bihar in a case of circumstantial evidence while dealing with the false explanation given by the accused in his statement under Section 313 Cr.P.C. held as under:

*“9. To combat this conclusion, learned counsel for the appellant drew our attention to the nature and position of the injuries on the body of the deceased woman as disclosed by the medical evidence of the Doctor, PW 17, who conducted the post-mortem examination, as also to the various indications at the site of the occurrence, as found and spoken to by the police-officer, PW 23, who was the first officer to go to the scene by about 7 am on the 4th on receiving information. He also drew our attention to the fact that according to the report of the Serologist and Chemical Examiner, no human blood appeared to have been found on the saree and the bodice found lying near about the place where the dead body was lying and that neither the saree nor the bodice showed any indication of having been torn or tampered with and that on the other hand the body was found lying absolutely naked with face upwards. These features have all been pressed into service for a strong argument that the murder must have been the act of more than one person and probably having its source in*

*sex jealousy. We have very closely and anxiously gone into this aspect of the matter by carefully scrutinising the entire evidence in this behalf. It is unnecessary to recapitulate the same. Whatever may have been the actual situation on the spot and the method by which the murder was in fact committed — a matter for mere speculation — we are satisfied that the murder could have been committed by a single individual in the position of the appellant. Sitting in an appeal by way of special leave, we are not prepared to say that the medical evidence and other concomitant circumstances were such as to compel a conclusion contrary to that arrived at by the Courts below. It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain. We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.”*

22. Considering the chain of circumstances as noted above, having been proved by the prosecution beyond reasonable doubt, this Court finds no infirmity in the impugned order of conviction and order on sentence. Consequently, the appeal is dismissed.

23. Copy of the judgment be communicated to the appellant through Superintendent, Tihar Jail and be sent also for updation of the records.

**Crl. M.B. No. 767/2017 (Suspension of sentence)**

Since the appeal has finally been decided and the judgment pronounced, application seeking suspension of sentence is dismissed.

**(MUKTA GUPTA)  
JUDGE**

**(SIDDHARTH MRIDUL)  
JUDGE**

**MAY 18, 2017  
'vn'**

