

CRA-D-306-DB-2016 (O&M)
Date of decision : 16.11.2019

versus

2. The brief facts are that on 17.06.2014 the police party was informed that one dead body was lying in the Sorghum (JOWAR) fields

of Rohtash son of Ram Kishan and the police reached there. They found the dead body of Usman and his family members were also present. His son lodged the FIR to the effect that on the previous night his father had gone to irrigate the jowar fields at about 11.30 P.M. but did not return through out the night and in the next morning when they were searching for him they found his dead body with injury marks. They suspected that he had been done to death by Rohtash (whose fields his dead body was lying) because of previous enmity.

3. The police initiated investigation but came to the conclusion that Rohtash was not guilty and arrested the two appellants and claimed that actually Usman was exploiting Warisa @ Kochar and she complained to her brother-appellant No.1-Hakam @ Mendal who along with a third person Fateh Mohamed conspired that on the fateful night Warisa @ Kochar would call Usman to the fields and as per that conspiracy she called up Usman and when he came to the fields he was killed.

4. The appellants were tried under Sections 302 and 201 read with Section 34 IPC, 1860 and were convicted under Sections 302 IPC read with Section 34 IPC and hence the present appeal.

5. The prosecution examined 22 witnesses and the accused pleaded not guilty.

6. The important witnesses being PW1, PW2, PW3, PW5, PW9, PW10, PW13, PW18, PW20 to PW22, their testimony would require a close scrutiny.

7. PW1 Constable Rishi Pal deposed that on 17.6.2014, he was posted at P.K. Khorl Kalan. On that date, he along with ASI Sunil Kumar, HC Ramesh Chand, EHC Rati Bhan, C. Tilak Raj, was present at

bus stand Khori chowki in crime detection duty, in Govt. vehicle. There ASI Sunil Kumar received information that one person was lying dead in JOWAR fields of Rohtash son of Ram Kishan resident of village Didhara. Thereafter, they reached at the spot and came to know that the dead body was of Usman son of Abdul Karim resident of Nizampur. At that time, Khursheed son of deceased Usman, Sahun and Fajruddin were also present there. Spot was inspected by ASI Sunil Kumar. Blood-stained earth, one Parna (Safi), blood stained leaves of JOWAR crop were lifted from the spot, which were sealed in plastic boxes with the seal of SK. Memo Ex.PW1/A was prepared, which were signed by him as attesting witness. Thereafter, ASI Sunil Kumar handed over to him the statement of Khursheed endorsed by ASI Sunil Kumar for registration of case, on which FIR Ex.PW1/B was recorded by Kulbir Singh, SI. He also made endorsement Ex.PW1/C on the said statement Ex.PW1/A. His statement was recorded by the IO.

8. PW2 Khurshid deposed that they are six brothers and two sisters. His father Usman was farmer and on 16.6.2014 at about 11.30 P.M., he had gone to tubewell for irrigating JOWAR crop in the fields and he did not return till morning. They searched for him but could not locate him. They were under the impression that some snake or other poisonous insect might have bitten him and that is they also went looking for him in the JOWAR crop fields. During search his younger brother Sagoon and his uncle Fazruddin noticed that his father was lying on earth in the field of Rohtash son of Ram Kishan of village Dhidhara and his neck was found cut with a sharp weapon. There was some altercation with him and his wife Pushpa 5-7 days before the murder of his father. It

was also brought to their notice that few days prior to the murder of his father a motorcycle was seen searching or noticing something as and when his father used to irrigate or do work in the fields during night hours. His brother Jakir Hussain had noticed those persons who were on motorcycle who could tell about their identity. When they noticed the dead body of his father many persons of village gathered at the spot and some one out of them informed the police telephonically and thereafter the police reached the spot. Police recorded his statement which is Ex.PW2/A which bears his signature at point 'A'. Police recorded his statement on 17.6.2014. Photographs Mark-A to Mark-D are of dead body of his father.

9. PW3 Harun deposed that on 17.6.2014 at about 1.00/1.30 A.M., he came to know that his brother Usman was murdered by some unknown person after cutting his throat and that he was lying in the JOWAR field of Rohtash. On this information he along with Khurshid went to the spot and identified the dead body to be that of Usman. They had raised suspicion upon Rohtash and his wife Pushpa as they were having inimical terms. But they were not definite that his brother had been murdered by Rohtash and his wife and they prayed to the police for the arrest of real culprits.

10. PW5 Irshad son of Shri Usman deposed that in the intervening night of 16th June at about 11.30 P.M. his father went for irrigation of fields. He did not return up to 8 A.M. on the next day and thus they started searching for him. His father was not found in the JOWAR field for irrigation of which he had gone and on their search in the nearby/adjacent field of the JOWAR belonging to Rohtash, his dead

body was found and his neck had been chopped off by some sharp edged weapon. He was dead. It appeared that his father was killed somewhere else as he was lying in the field as if he had been laid to rest there. People gathered at the spot. Somebody informed the police. Police reached the spot. Police recorded his statement. They named owner of field namely Rohtash on the basis of suspicion.

11. PW9 Adil deposed that he purchased a Vodafone SIM No. 7027271171 from Irshad, distributor at Tauru but the said SIM was not activated and he returned the same to Irshad.

12. PW10 P/Sub-Inspector Kulbir Singh deposed that on 19.6.2014, he was posted at Police Station Tauru. On that day, he, Lady Head Constable Manju and Constable Sumer were associated with Inspector Ashok Kumar in the investigation of this case. Accused Hakam alias Mendak, Warisa alias Kochar were interrogated and on interrogation, Hakam suffered disclosure statement Ex.PW10/A and accused Warisa suffered disclosure statement Ex.PW10/B. He and Lady Head Constable Manju and Constable Sumer signed both the disclosure statements. On 20.6.2014, he and Head Constable Vikrant remained associated in the investigation of this case and both the accused were again interrogated in our presence. On interrogation, accused Hakam suffered disclosure statement Ex.PW10/C and accused Warisa also suffered disclosure statement Ex.PW10/D. In pursuance of disclosure statements both the accused led the police party to village Nizampur firstly, at the house of Hakam and from there accused Hakam got recovered one knife and accused Hakam disclosed that he had burnt the wooden handle of knife. The knife was converted into a sealed parcel

upon which seals of monogram of M.S. were affixed and said knife was taken into possession of police vide recovery memo Ex.PW10/E. Thereafter, accused Warisa led the police party to her house and got recovered one mobile phone make Nokia model 1280 of black colour without SIM, Ex.P1, from her residential house and the same was taken into possession of the police vide recovery memo Ex.PW10/F. Thereafter, both the accused got demarcated the place of occurrence and in this regard demarcation memo Ex.PW10/G was prepared. He and Head Constable Vikrant signed the above exhibits/memos. His statement under section 161 of the Code of Criminal Procedure,1973, was recorded. Accused were present in the Court. On 17.6.2014, he received written intimation Ex.PW2/A and recorded F.I.R. Ex.PW1/B and made endorsement Ex.PW1/C on Ex.PW2/A. He also sent special report through Constable Vikram Singh, to the learned Area Magistrate and senior officers of police Department. (At this stage a sealed parcel containing one knife (blade) has been opened and knife (blade) Ex. P40 has been taken out from the sealed parcel. The witness has stated that the knife (blade) Ex.P40 was the same, which was recovered from accused Hakam). His statement under section 161 of the Code of Criminal Procedure,1973, was recorded by the Investigating Officer. Accused were present in the Court.

13. PW13 Head Constable Arun Kumar deposed that on 4.9.2014, he was posted as in-charge, Cyber cell, Mewat. On that day, on the request of the S.H.O., Police-Station Tauru, he had taken call details of mobile phones having S.I.M numbers 9991655678 (Vodafone), 7027271171 (Vodafone) and 9991483107 (Vodafone) from 15.5.2014 to

17.6.2014. He also took call details of mobile phone bearing IMEI No. 355914059998220 from 1.6.2014 to 18.6.2014. The said call details are running into 34 sheets and same were taken into possession of police vide recovery memo Ex.PW13/A. His statement under section 161 of the code of Criminal Procedure, 1973, was recorded.

14. PW18 Assistant Sub-Inspector Sunil Kumar deposed that on 17.6.2014, he was posted as Assistant-Sub-Inspector/incharge, Police Post Khori-Kalan under the jurisdiction of Police-Station Tauru. On that day, he along with Head Constable Ramesh, E. Head Constable Rati Bhan and Constable Rishi Pal with Government vehicle driven by Constable Tilak Raj, was present at bus stand of village Khori-Kalan in connection with crime detection duty when he received telephonic information that a dead body was lying in the fields of village Nizampur. On the basis of said information, he along with other police officials reached the spot and Sahun, Khursheed sons of Usman and Fajruddin were found present there. Khursheed got recorded his statement Ex.PW2/A. He made endorsement Ex.PW18/A on the statement Ex.PW2/A. He sent the written intimation to the Police-Station Tauru, through Constable Rishi Pal, for registration of the F.I.R. I lifted blood stained earth, blood-stained leaves of 'JOWAR' and blood-stained small scarf from the place of occurrence. He prepared separate sealed parcel of each article and sealed the same with the monogram of S.K. The said blood-stained articles were taken into possession of police vide recovery memo Ex.PW1/A, which was signed by Constable Rishi Pal. He called the photographer at the spot and he clicked photographs, Ex.P2 to Ex.P5. He inspected the place of occurrence and prepared rough site plan Ex.PW18/B. He took the dead

body to Community Health Centre, Nuh, for getting the post-mortem examination of deceased Usman. In this regard, he moved application Ex.PW18/C before the S.M.O., Community Health centre, Nuh. He prepared inquest report Ex.PW18/D. After post-mortem examination, he handed over the dead body of deceased to his family members. He also got conducted videography of post-mortem examination on the dead body of deceased Usman by the photographer. He recorded the statements of witnesses at the relevant dates and time under section 161 of the Code of Criminal Procedure, 1973.

15. PW20 Inspector Ashok Kumar deposed that on 18.6.2014, he was posted as Inspector/ S.H.O., Police-Station Tauru. On that day, he arrested accused Hakam alias Mendak, Warisa alias Kochar from village Nizampur. On 19.6.2014, P. Sub-Inspector Kulbir, Lady Head Constable Manju and Constable Sumer were joined in the investigation of this case, with him. Accused Hakam alias Mendak, Warisa alias Kochar were interrogated and on interrogation, Hakam suffered disclosure statement Ex.PW10/A and accused Warisa suffered disclosure statement Ex.PW10/B. P. Sub-Inspector Kulbir, Lady Head Constable Manju and Constable Sumer signed both the disclosure statements. On 20.6.2014, the accused were again interrogated by him, in the presence of P. Sub-Inspector Kulbir and Head Constable Vikrant. On interrogation, accused Hakam suffered disclosure statement Ex.PW10/C and accused Warisa also suffered disclosure statement Ex.PW10/D. In pursuance of disclosure statements both the accused led the police party to village Nizampur firstly, at the house of Hakam and from there accused Hakam got recovered one knife and accused Hakam disclosed that he had burnt the

wooden handle of knife. The knife was converted into a sealed parcel upon which seals of monogram of M.S were affixed and said knife was taken into possession of police vide recovery memo Ex.PW10/E. He prepared rough sketch Ex.PW20/A of the place of recovery of knife. Thereafter, accused Warisa led the police party to her house and got recovered one mobile phone make Nokia model 1280 of black colour without SIM, Ex.P1, from her residential house and the same was taken into possession of the police vide recovery memo Ex.PW10/F. He prepared rough sketch Ex.PW20/B of the place of recovery of mobile phone. Thereafter, both the accused got demarcated the place of occurrence and in this regard demarcation memo Ex.PW10/G was prepared. He deposited the case property with M.H.C., Police-Station Tauru. He recorded the statements of relevant witnesses on relevant time and place under section 161 of the Code of Criminal Procedure,1973. Accused are present in the Court today. On 20.6.2014, knife (blade) Ex.P40 was recovered from accused Hakam, vide recovery memo Ex.PW10/E. Accused were present in the Court.

16. PW21 Shyam Partap Singh deposed that he was posted as Nodal Officer in Vodafone company, D-8, Udyog Vihar, Rohtak Road, Peeragarhi, New Delhi. On the request by E-mail i.e. sp-mewat.har@nic.in from the office of the Superintendent of Police, Nuh, on their Nodal officer's E-mail i.e. nodalddharyana@vodafone.com about obtaining the call details of mobile phones having Vodafone S.I.M numbers 9991655678, 7027271171 and 9991483107 from 15.5.2014 to 17.6.2014, mobile phone bearing IMEI No. 355914059998220 from 1.6.2014 to 18.6.2014, their office provided the said call details on the

above said E-mail of the office of Superintendent of Police, Nuh. The said call details running into 34 sheets are Ex.P6 to Ex.P39. He had seen the same on the Court file, which were issued by our company.

17. PW22 Dr. Sanjay Phogat tendered his affidavit Ex.PW22/A, in evidence. The postmortem examination on the dead body of Usman was conducted by the Board of doctors consisting of Dr. Mahender Singh Ranga, Dr. Irfan and himself. Post-mortem report is Ex.PW22/B, which bears his signature and signatures of other doctors of Board. After conducting post-mortem examination, they handed over a vial for evaluation of alcohol and cloth parcel containing one cut and torn white shirt (Kurta) with dark brown stains and one white cloth (thehmad/Chadar) with brownish stains, to the police. (At this stage one sealed parcel has been opened and one cut and torn white shirt (Kurta) with dark brown stains Ex.P41 and one white cloth (thehmad/Chadar) with brownish stains Ex.PW42, have been taken out. The witness has stated that cut and torn white shirt (Kurta) with dark brown stains Ex.P41 and one white cloth (tehmad/Chadar) with brownish stains Ex.PW42, were the same which were handed over by us to the police).

18. The contents of the affidavit Ex.PW22/A are reproduced as under:

“I, Dr. Sanjay Phogat, M.O. C.H.C., Nuh, District Mewat, do hereby solemnly affirm and declare as under:

I was posted as Medical Officer at C.H.C. Nuh. Below postmortem was conducted by board of doctors in which I was one of member. PMR/SP/MSR/MI/2014 deceased Usman son of Shri Abdul Karim, resident of village Nizampur, 55 years male, Tehsil Tauru, District Mewat, dead body brought

by Police Station Tauru, as per police papers cut throat is the cause of death blood sample for alcohol is taken.

External appearance-165 centimeters dead body of a middle age male about 50-55 years old, well built and nourished. Dressed in white tehmad and kurta. Kurta smeared with dried blood on front of chest, shoulder region and back over the nape, eyes closed with healthy sclera and conjunctiva with B/L fixed dilated pupils' cornea and lips dried and shrunken mouth semi open with visible intact denture. Sub scalp haemotoma of size 8x2 centimeters and 5x1 centimeters placed anterior posterior in mid-line over center of head parallel to each other. Underlying bone and brain, matter healthy, grey hair over scalp and grey beard. Liquid semen found smearing tip of penis and right thigh upper aspect. Scrotal swelling B/L perennial region soiled with passed out stools.

Skin all over body darkish, dry, wrinkled and easily peeled off mainly over trunk, inguinal region, pelvic fossa, right forearm and lower legs. Neck region anteriolaterly and nape region smeared with dried and liquid blood dark red in colour. PMS of normal colour seen all over the body except gluteal and scapular region.

Rigor mortis present over jaw and all the four limbs.

Postmortem growing mark in the form of lost superficial skin seen over left hand little finger dorso lateral aspect.

And on tip of ring finger, face and head placed flexed towards the right side.

Injuries-incised wound of size 8 centimeters x 3 centimeters x 3 centimeters seen over the anterior aspect of neck just across lower boarder of thyroid cartilage cutting the across the trachea separating it from upper part with severing of jugular veins of right side and left side with

surrounding tissue smeared with dried red blood and trachea containing dark red clotted blood.

Heart health and containing little dark red clotted blood about 10 milliliter blood is collected for evaluation of alcohol by F.S.L. to rule out alcohol content, if any.

In our opinion, deceased died of asphyxia resulting from cut throat injury by sharp edged weapon which was ante-mortem and sufficient enough to cause death in normal course of life. Handed over to police sealed parcel of the cloths and sealed parcel containing a vial for evaluation of alcohol by F.S.L.

Probable time :

Duration : Between injury and death. Within few minutes.

Duration : Between death and postmortem 12 to 24 hours.”

19. Learned counsel for the appellants has argued that the only objective evidence which has come is that the phone from which calls were made to the deceased before his death was allegedly recovered on the disclosure of Warisa @ Kochar-appellant No.2. As per him, there is no evidence of the rest of the links of this case of circumstantial evidence. By way of illustration, he has pointed out that there was no evidence that Warisa @ Kochar had any liason with the deceased; or that the deceased was exploiting Warisa @ Kochar; or that the deceased had ever lent any money to Warisa @ Kochar. It is his submission that in the absence of these links the chain of circumstantial evidence cannot be taken to be completed.

20. Learned State counsel has sought to defend the judgment but is not in a position to deny that there is no evidence about the other links.

It is trite to say that to convict in a case of circumstantial evidence all the circumstances appearing in the case have to point to the guilt of the

accused. Here the only circumstance is the alleged disclosure.

21. We consider it very unsafe to base a conviction on this solitary circumstance.

22. Appeal stands allowed and the impugned judgment and order is set aside. Appellant No.1 is in custody. He be released forthwith, if not required in any other case. Appellant No.2 is on bail. Surety/bail bond stands discharged qua her.

23. Since the main case has been decided, the pending Crl.Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

16.11.2019

pooja sharma-I

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No