

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D No. 713-DB of 2009 (O&M)

Reserved on : 30.4.2019

Date of decision : 7.5.2019

Kapil Appellant
versus
State of Haryana ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Avneesh Jhingan**

Present Mr. Rahul Vats, Advocate, for the appellant.
Ms. Shubhra Singh, Additional Advocate General, Haryana.

Rajiv Sharma, J.

1. The present appeal is instituted against judgment dated 16.7.2009 and order dated 18.7.2009, rendered by learned Additional Sessions Judge, Fast Track Court, Gurgaon, in Sessions Case No. 75 of 2008/ 2009, by appellant Kapil. He was charged with and tried for the offence punishable under Sections 302/201/34 IPC. He was convicted and sentenced under Section 302 read with Section 120-B IPC to undergo life imprisonment and to pay fine of ₹ 5,000/-, in default of payment of fine, to undergo further imprisonment for a period of two years.

2. The case of the prosecution in a nutshell is that on 28.11.2007, complainant Pawan Kumar lodged a report with the police to the effect that he was having a shop of spectacles at Sohna Chowk and his old house is in Gali No. 8, Madan Puri, Gurgaon. He has constructed two rooms. In one

room, Ravi son of Gaji was tenant and Anuj of the village of Ravi was also residing with him. On 28.11.2007 at about 3.00 or 4.00 P.M., Ravi came to the house of the complainant and told him that on 25.11.2007 at about 3.00 P.M., Kapil and his friends Dinesh and Chhotu of Bijnaur came to his room. Kapil sent Ravi for getting charged his mobile, while Anuj was sent for bringing ration. After about one hour complainant came to his room. He saw that a person was killed after strangulating him with an electric wire and that person was not known to the complainant. The unknown person was killed by accused Kapil, Dinesh and Chhotu. Ravi and Anuj were threatened by Kapil and his companions that if this fact was disclosed to anybody, they would be killed. The dead-body was dumped on the grass existing in premises of the vacant boundary wall. Due to fear, the complainant could not tell this fact to anybody. The dead-body was sent for post-mortem examination. FIR was registered. Investigation was completed and challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses in support of the case. The statement of the accused was also recorded under Section 313 Cr.P.C. He denied the case of the prosecution. He was convicted and sentenced, as noticed hereinabove. Hence, the present appeal.

4. Learned counsel appearing on behalf of the appellant vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State vehemently argued that the prosecution has proved its case beyond reasonable doubt and supported the judgment and order of the learned Court below.

5. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

6. PW1 Ravi was 17 years of age at the time of recording of his statement. The Court was satisfied that he was able to answer the questions put to him. According to him, on 25.11.2007, he was residing in Gali No. 8, Madanpuri, Gurgaon, along with Anuj. He was working on machine in the factory of Kapil in Devi Lal Colony, Gurgaon. On 25.11.2007, Kapil and Chhotu came to his room at about 8/9.00 P.M. After that Dinesh along with another person came on a motorcycle, whom he did not know. He was having a black coloured bag. Kapil sent him to get the mobile recharged. Kapil also sent Anuj out to bring something. After about one hour, he came back. He saw a dead-body. The dead-body was of a person, who came to his room with black coloured bag. In the meanwhile, Anuj also arrived. Kapil along with Chhotu and Dinesh threatened him not to disclose the incident to anybody. Thereafter, Kapil, Chhotu and Dinesh picked up the dead-body and put it into a room without roof where grass had also grown. After that all the three accused, left the place of occurrence. Due to fear, he and Anuj did not disclose the incident to anybody. On 28.11.2007, he narrated the incident to Pawan Kumar.

7. The statement of PW1 Ravi was duly corroborated by PW2 Anuj. At the time of recording of statement, he was 16 years of age. He also testified that on 25.11.2007, Kapil and Chhotu came to PW1 Ravi. After that Dinesh along with an unknown person came on a motorcycle. Kapil sent PW1 Ravi for recharging the mobile and sent him to bring food. When he came back with food, he saw through the window that Dinesh had caught hold both the hands of unknown person. Kapil and Chhotu were having a noose of electric wire in the neck of the unknown person. He had seen them

strangulating that unknown person. He came back near the gate out of fear.

After some time PW1 Ravi also came. They went inside the room. In the room, they saw dead-body of unknown person in whose neck electric wire was tied around his neck. Accused Kapil, Dinesh and Chhotu threatened them not to disclose the incident to anybody. In his cross-examination, he deposed that he reached the room at about 9.30 P.M. The room was opened at that time. Kapil with 2-3 persons was present in the room. PW1 Ravi was also present at that time.

8. PW3 Pawan Kumar deposed that he owned an old house in Madanpur, Gurgaon. There were two rooms in the said house. One room was given on rent to PW1 Ravi and PW2 Anuj, whereas one room was lying vacant. On 28.11.2007, PW1 Ravi and PW2 Anuj came to him at around 12.30/ 1.00 P.M and told that some murder had taken place in his house on 25.11.2007. They disclosed to him that master of PW1 Ravi had come along with 3/4 persons on 25.11.2007. PW1 Ravi was sent for recharging the mobile and had sent PW2 Anuj for purchasing some food articles. When they came back, they found that murder had taken place. They had also disclosed to him that those persons had threatened them not to disclose the incident to anyone. He asked PW1 Ravi and PW2 Anuj to report the matter to the police. The police had recorded his statement, Ex.PA.

9. PW8 HC Babu Lal deposed that on 30.11.2007, he was joined in investigation by ASI Suresh Kumar. The accused were arrested. Accused Kapil was interrogated. He made disclosure statement that he had taken TV on loan and the person, who was to collect installment from him, would be coming on that day. He along with Chhotu and Neetu made a plan to

eliminate the deceased. Money was stolen. His disclosure statement is Ex.PG. Accused Chhotu @ Hitesh was also interrogated. His disclosure statement is Ex. PH. Thereafter, accused Neetu was also interrogated. His disclosure statement is Ex.PI. On the basis of disclosure statements, recoveries were effected.

10. PW9 Fahim Miyan is the brother of the deceased. According to him, deceased Hasin Miyan was his elder brother. He was working in Dream Light Company, Gurgaon, for the last three years. He was residing at Pankaj Market, Hans Enclave, on rent. On 26.11.2007, when his brother Hasin Miyan did not reach Bareilly, they called his employer Parkash. They tried to contact him on his phone. His phone was switched off. On 27.11.2007, they reached Gurgaon. Police called them and told about a dead-body. He identified the dead-body of his brother. Police recorded his statement.

11. PW12 Supan Parkash deposed that he had an office in the name of Dream Light at Pankaj Market, Gurgaon. He used to deal in electronic items i.e. TV, fridge, etc. He used to sell the electronic items on installment basis. Hasin Miyan (deceased) used to work in his office for the last three years. He used to see the accounts work and marketing. He had given him a motorcycle Bajaj Boxer. He used to wear wrist watch and ring of gold. On 25.11.2007, Hasin Miyan (deceased) told him that after collection of today's installments, he would go to his home Bareilly. He used to go for collection on installments with a black colour bag in which he used to keep bill book, receipt book and diary. On 26.11.2007, when he came to his house, Hasin Miyan (deceased) was not there. On 27.11.2007, a telephonic call from the house of Hasin Miyan was received that Hasin Miyan had not reached home

and his mobile phone is switched off. Thereafter, he started searching for him. When he did not find Hasin Miyan anywhere, he informed his family members that something is serious and they should come to Gurgaon. On 28.11.2007, he along with relatives of the deceased searched the places where Hasin Miyan had to go for collecting installments on the said date. They had also gone to the residence of Kapil at Devi Lal Colony, as Kapil had also taken a TV on installments. He had to pay the installment on 25.11.2007. Wife of Kapil, namely, Asha told them that Kapil and his friends Dinesh and Chhotu had murdered a person 3-4 days back and since then they had been absconding.

12. PW13 Asha Kumari is the wife of accused Kapil. She deposed that they had bought a colour TV set on 22.9.2007 from Dream Light Marketing Unit, Hans Enclave, Gurgaon, on installments. The total cost of the TV was ₹ 6,400/- and she had deposited ₹ 1,100/- in advance as down payment. Rest was to be paid in installments. Her husband along with his friends Dinesh and Chhotu had murdered Hasin Miyan as disclosed to her by PW1 Ravi and PW2 Anuj. PW1 Ravi used to help her husband in his work and PW2 Anuj was PW1 Ravi's friend.

13. The post-mortem was conducted by PW15 Dr. Hazari Lal. He led his evidence by filing affidavit, Ex.PT. According to him, he had noticed a black power electric wire encircling around the neck tightly in the middle of lower neck. The cause of death was asphyxia, which was caused due to encircling of electric wire. Time elapsed between death and post mortem was 72 hours.

14. PW18 ASI Suresh Kumar recorded the statement of complainant PW3 Pawan Kumar vide Ex.PA. FIR was registered. The dead-body was identified by Faheem Miyan on 29.11.2007. He arrested accused Kapil, Dinesh and Hitesh. They made disclosure statements, on the basis of which recoveries were effected.

15. The prosecution has mainly relied upon the statements of PW1 Ravi and PW2 Anuj. PW1 Ravi has deposed that on 25.11.2007, Kapil and Chhotu came to his room at about 8/9.00 P.M. Thereafter Dinesh along with another person also came on a motorcycle. He was having a black coloured bag. Kapil sent PW1 Ravi to get the mobile recharged. Kapil also sent PW2 Anuj for bringing some food item. When he came back, he saw a dead-body. The dead-body was of the un-known person, who came to his room with black coloured bag. After some time, PW2 Anuj also reached. Kapil along with Chhotu and Dinesh threatened them not to disclose the incident to anybody. Dinesh, Chhotu and Dinesh picked up the dead-body and put the same into a room without roof where grass had grown. He had seen the accused strangulating the unknown person.

16. PW2 Anuj also deposed that on 25.11.2007, Kapil and Chhotu came to the room of PW1 Ravi. After that Dinesh along with an unknown person came on a motorcycle. Accused Kapil sent PW1 Ravi for recharging the mobile. He sent him to bring food. When he came back, he saw through the window that the accused had killed the unknown person by strangulating. Thereafter, PW1 Ravi also came. They went inside the room and saw the dead-body of unknown person in whose neck electric wire was tied around his neck. On 28.11.2007, they narrated the incident to PW3

Pawan Kumar (complainant).

17. The appellant had taken a colour TV set on 22.9.2007 from the shop of PW12 Supan Parkash, namely, Dream Light Marketing Unit, Hans Enclave, Gurgaon, on installments. He had to pay the installment on 25.11.2007. Hasin Miyan (deceased) was employed by PW12 Supan Parkash to collect the money. PW9 Fahim Miyan deposed that his brother was working in Dream Light Company, Gurgaon. PW13 Asha Kumari is the wife of appellant Kapil. She has supported the case of the prosecution. According to her, a colour TV set was purchased by them on 22.9.2007 from Dream Light Marketing Unit, Hans Enclave, Gurgaon, on installments. The total cost of the TV was ₹ 6,400/-. She had deposited ₹ 1,100/- in advance as down payment. Rest was to be paid in installments. Her husband along with his friends Dinesh and Chhotu had murdered Hasin Miyan. Recoveries were effected on the basis of disclosure statements made by the accused. The statements were made voluntarily.

18. The prosecution has proved the case against the appellant beyond reasonable doubt. There is no occasion for us to interfere with the well reasoned judgment and order recorded by the learned trial Court. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

7.5.2019
vs

(Avneesh Jhingan)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No