

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

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Reserved on: 4th February, 2019

Decided on: 4th April, 2019

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CRL.A. 990/2018

SHAMSHAD @ MURAPPAN & ORS.

..... Appellant

Represented by: Mr. Avinash Nandan Sharma,
Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present appeal, Shamshad @ Murappan, Akram and Shahrukh @ Sharup Khan challenge the impugned judgment dated 5th July, 2018 convicting them for the offence punishable under Sections 304 Part-II and 34 IPC and the order on sentence dated 7th July, 2018 directing them to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period six months for the offence punishable under Section 304 Part-II/34 IPC.

2. Assailing the conviction, learned counsel for the appellant contends that the appellants have been convicted on the statement of the sole eye-witness Hori Lal who is not a reliable witness as there are various inconsistencies in his testimony. Statement of Hori Lal regarding the number of workers present at the factory does not match the attendance sheet of the factory. Moreover, Hori Lal was under the influence of drugs

when he identified the appellants as even stated by ASI Subhash Chander (PW-17).

3. Learned APP for the State on the other hand relies upon the post-mortem report and contends that the impugned judgment and the order on sentence suffers from no illegality.

4. Process of law was set into motion on 3rd July, 2017 at about 10:36 A.M. when information was received regarding one man with stab injuries lying near Sector-2, K-Block, Bhagat Singh Chowk. Aforesaid information was recorded vide DD No. 11A (Ex.PW-10/A) and was assigned to SI Udai Singh. He alongwith Ct. Rahul reached the vacant place to the West Side of Factory No. N-129 where one dead body of male was lying in a vacant place between K and N Block. CAT ambulance reached at the spot where Paramedic Staff Member Meetha Lal examined the person who was declared dead. On examination of the body he stated that there were sharp injuries on the head of the deceased. He inspected the site and found blood at two spots about 20 steps away from the dead body. In between these two places of blood there were marks of dragging. Photographs of the dead body were taken vide Ex.PW-5/A-1 to A-9. He called the crime team at the spot and efforts were made to establish the identity of the deceased but the same could not be identified. He then prepared the rukka. On the basis of rukka, FIR No. 271/2017 (Ex.PW-10/B) was registered for offence punishable under Section 302 IPC at PS Bawana.

5. Further investigation of the case was handed over to Insp. Anil Kumar who prepared the site plan vide Ex.PW-25/A at the instance of SI Udai Singh. Blood, blood stained earth and earth control was lifted from near the body put in separate plastic containers, sealed with the seal of US and seized

vide seizure memo Ex.PW-20/B, Ex.PW-20/C and Ex.PW-20/D respectively. Dust particles from the foot of the body were taken with the help of wooden stick, sealed with the seal of US and seized vide seizure memo Ex.PW-20/H.

6. On 4th July, 2017, Insp. Anil Kumar got prepared one big pamphlet with photograph of the deceased. The same was affixed on E-rickshaw in which HC Rajbir was directed to go in the area so that the identity of the deceased could be established. Photograph of the deceased was identified by his mother Haseena Khatoon and his maternal uncle Kesar Ali. They were taken to the mortuary in BSA Hospital where they identified the dead body. On 5th July, 2017 Haseena Khatoon and Kesar Ali's statements regarding identification of dead body were recorded vide Ex.PW-3/A and Ex.PW-4/A. Post mortem of the dead body was got conducted after which the body was handed over to the relatives of the deceased vide Ex.PW-3/B.

7. On 8th July, 2017 an informer went to the police station and informed them that he could introduce them to one person who had vital information with regard to the present case. On receipt of this information Insp. Anil Kumar along with SI Dhirender, ASI Vinod, ASI Subhash, HC Manjeet and the secret informer left the police station and reached near Toilet block of JJ Colony, Bawana where the secret informer pointed out towards one person who revealed his name as Hori Lal. On enquiry he stated that he alongwith the deceased entered in a factory situated in Sector 12, DSIDC Bawana in the intervening night of 2nd/3rd July 2017 with the intention of committing theft but the persons in the factory started following both of them. He further stated that he along with Naushad jumped, came out of the factory and ran away. He led them to Factory number N-196, Sector-2, DSIDC Bawana and

identified three persons who disclosed their names as Shahrukh, Akram and Shamshad. He interrogated them and they confessed about the commission of crime. Shamshad, Shahrukh and Akram were arrested vide arrest memo Ex.PW-17/A, Ex.PW-17/D and Ex.PW-17/G respectively. Their personal search was conducted vide personal search memos Ex.PW-17/B, Ex.PW-17/E and Ex.PW-17/H respectively. Their disclosure statements were recorded vide Ex.PW-17/C, Ex.PW-17/H and Ex.PW-17/I respectively. Shahrukh, Akram and Shamshad pointed out the pole with which the deceased was tied and beaten vide pointing out memos Ex.PW-17/K, Ex.PW-17/L and Ex.PW-17/M respectively. The same was seized vide memo Ex.PW-24/A. Shahrukh led them behind the factory and got recovered one plastic rope of white and green colour. The rope was wrapped in a white cloth, sealed with the seal of DS and seized vide seizure memo Ex.PW-17/P. Akram led them to the first floor and from the roof got recovered one balli. On the balli English alphabet, 'R' was found written in black colour. The balli was measured, wrapped in a white cloth, sealed with the seal of DS and seized vide seizure memo Ex.PW-17/O. Shamshad led them to the first floor and from the roof got recovered one balli. On the balli English alphabet, 'R' was found written in black colour. The balli was measured, wrapped in a white cloth, sealed with the seal of DS and seized vide seizure memo Ex.PW-17/N. He sent the exhibits to BSA Hospital for subsequent opinion. Subsequent opinion was collected vide Ex.PW-1/B. The exhibits were sent to FSL for analysis.

8. On 14th September, 2017, factory owner was joined in the investigation. He produced the copy of the rent agreement (Ex.PW-2/F) and attendance register (Ex.PW-2/D) which were seized vide seizure memo

Ex.PW-2/C. He also produced the CD having CCTV footage (Ex.PW-2/A) and the certificate under Section 65B Evidence Act (Ex.PW-2/B) which were seized vide seizure memo Ex.PW-2/E.

9. On 29th September, 2017 supplementary statements of Hori Lal and Haseena Khatoon were recorded. FSL results were collected vide Ex.PW-2/A and Ex.PW-23/A. The scaled site plan of the place of occurrence was prepared vide Ex.PW-11/A.

10. After the completion of investigation, charge sheet was filed. Vide order dated 23rd November, 2017, charge was framed for the offence punishable under section 302/34 IPC against the appellants.

11. Hori Lal (PW-21), friend of the deceased in his testimony stated that he along with the deceased had entered the factory to steal iron for the purpose of selling it. They used the sale proceeds for purchasing drug items/nasha patti. After entering the factory, they ran away as some persons were present in the factory. He hid behind the trees and saw Shamshad, Akram and Shahrukh beating up Naushad with Ballis and dandas. He stated that there were marks of injury on Naushad's body but he had not seen the dead body of Naushad. He stated that in the morning hours he was in the toilet near E Block and the police lifted him from there. Thereafter he was taken to the factory where he identified Shamshad, Akram and Shahrukh and his thumb impression was obtained. He did not identify his thumb impression on the arrest memos of Shamshad, Akram and Shahrukh. In his cross-examination he stated that he knew the deceased for 1-2 years prior to the incident. He further stated that the mother of the deceased had asked him not to visit their house. Naushad used to take drugs and one night he told him to accompany him. On the day of the incident when Naushad came to

him he was intoxicated. He admitted that he had been taking Ganja for the last two years but denied consuming the same with Naushad. He stated that they used to earn Rs.300 – Rs.400 per day by selling vegetables. He stated that they had not planned anything before entering the factory. There were other factories also near that factory. Naushad scaled the wall and after going inside the factory he opened the door of the factory, in the mean while the persons working in the factory woke up, he remained outside the factory only. He fled towards the park on hearing the noise coming from the factory. No other persons/worker of the surrounding factory came there, only the persons of that factory woke up. He stated that some people reside in the factory itself and people also stay back during the night in the adjoining factories. Police took him to the factory 3-4 days after the incident. On being questioned as to when he came to know about the death of Naushad he stated that he got to know about the death on the same day but got frightened and therefore did not meet the police. He met the police 2-3 days after the incident and told them about the incident, when he had come to know about the death of Naushad. He stated that he had sent his friend to Naushad's house to tell his mother of his death. He denied the suggestion that he killed Naushad as his mother used to scold him. He stated that when Naushad came back after entering the factory he told him that three persons were sleeping in the factory. There was one camera inside the factory in which image of Naushad was also captured. There were 2-3 cases of theft pending against him and he had remained in jail also for a while.

12. Amit Kumar (PW-9), stated that on the day of the incident when he reached his factory, one of the employees of his factory informed him that one male dead body covered in blood was lying on the ground in K-Block,

near Bhagat Singh Chowk, Bawana. At about 10:15 A.M., he along with the guard of his factory and other employees reached the spot where one male body was lying near High Tension Pole. He called the police on 100 number. In his cross-examination he stated that 2-3 months after the incident he was called to PS Bawana, where a photocopy of his identity card and other particulars were taken.

13. Kesar Ali (PW-3), maternal uncle of the deceased stated that his sister had informed him that her son Naushad went missing from the house on 3rd July, 2017. On 4th July, 2017 he found a poster pasted on e-rickshaw and identified the photograph of the dead person as that of his nephew Naushad. Thereafter, they went to the police station where police had shown the photographs of his nephew. On 5th July, 2017 they went to the mortuary of BSA hospital and identified the body of the deceased as his nephew. In his cross-examination he stated that they did not lodge any missing report with the police. He further stated that he did not know if Hori Lal was a friend of his nephew Naushad.

14. Haseena Khatoon (PW-4), mother of the deceased stated that on 2nd July 2017 her son was sleeping in another room. In the morning she found her son missing. On 3rd July 2017, someone informed her that there is a poster of hue and cry pasted on the e-rickshaw. She went to Bawana stand where she saw a poster on the e-rickshaw and identified the person visible on the poster as her son Naushad. On 5th July, 2017 they went to the mortuary of BSA hospital and identified the body of the deceased as her son. In her cross-examination she stated that she had not lodged any missing report.

15. Jaswinder Pal Kohli (PW-2), owner of the Factory No. 196, Sector-2,

DSIDC Bawana, Delhi stated that on the request of the police he handed over the photocopy of attendance register of his employees and copy of rent agreement and footage of CCTV recording on a CD. He identified the appellants as his employees who were working in his factory on that day. In his cross-examination he stated that the police had not informed him that Hori Lal had entered his factory to commit theft.

16. Arun (PW-7), photographer stated that he is running a photography studio by the name of J.P. On 8th July, 2017 he was called by police official of PS Bawana. He reached there and accompanied the police in front of factory no. N-196, Sector-2, DSIDC, Bawana. He took four photographs of the electricity pole where there were blood stains vide Ex.PW-7/A-1 to A-4.

17. Dr. Vijay Dhankar (PW-1), Specialist & HOD Forensic Medicine, BSA Hospital stated that on 5th July, 2017, he conducted the post-mortem on the body of the deceased. On external examination, he found 24 injuries:

- 1. Abrasion, 1.5 cm X 1 cm, present over the upper part of middle of forehead.*
- 2. Abrasion, 1 cm X 1 cm, present over the lower part of middle of forehead.*
- 3. Abrasion, 3 cm X 2 cm, present over the upper outer part of right cheek about 1 cm below the right eye.*
- 4. Contused abrasion 6 cm X 5 cm, present over the upper inner part of right side of face.*
- 5. Abrasion, 4 cm X 2 cm, present over the upper part of left side of forehead.*
- 6. Abrasion, 1.5 cm X 1 cm, present over the upper outer part of left cheek about 2 cm below the left eye.*
- 7. Laceration 3 cm X 0.5 cm present over the right ear.*
- 8. Abrasion 4 cm X 2 cm present over the middle part of front of neck.*

9. Contusion 6 cm X 3 cm present over the right side of lower part of front of neck.
10. Laceration 3 cm X 0.5 cm present over the middle part of right temporal region of head.
11. Laceration 3 cm X 0.5 cm present over the upper part of right temporal region of head.
12. Contusion 7 cm X 6 cm present over the right side of front of chest 1 cm inner to the right nipple
13. Rail track type contusion 15 cm X 3 cm with about 1 cm gap between the parallel contusions, horizontally placed, present over the middle part of right side of front of chest.
14. Rail track type contusion 13 cm X 3 cm with about 1 cm gap between the parallel contusions, horizontally placed, present over the lower part of right side of front of chest.
15. Multiple confluent in an area 48 cm X 42 cm present over the back of chest and abdomen. Multiple patterns of rail track type contusions seen with gaps of about 1 to 2 cm between the parallel line contusions.
16. Multiple confluent Contusions in an area of 32 cm X 26 cm present over buttocks.
17. Contused abrasion 5 cm X 4 cm present over the left side of lower part of back of abdomen.
18. Contused abrasion 5 cm X 2 cm present over the right side of lower part of back of abdomen.
19. Contusion 18 cm X 12 cm present over the upper and middle part of back of right leg.
20. Contusion 19 cm X 11 cm present over the middle and lower part of back of left arm.
21. Abraded contusion 5 cm X 4 cm present over the back of right wrist.
22. Abrasion 1 cm X 1 cm present over the back of right hand at the knuckle of base of middle finger.
23. Abrasion 32 cm X 3 cm, vertically placed, present over the front of left thigh.

24. Abrasion 2 cm X 2 cm present over the front of left knee.

18. Dr. Vijay Dhankar exhibited the post-mortem report as Ex.PW-1/A and opined that the death was due to a combined effect of cerebral damage with hemorrhagic shock consequent to multiple injuries to the body. All injuries were ante-mortem fresh before death and caused by blunt force. Injury no.1 to 20 taken together along with the internal injuries are sufficient to cause death in the ordinary course of nature. On 28th July 2017 when a subsequent opinion was sought he opined that the injuries mentioned in the post-mortem report could be caused by the wooden ballis. During his cross examination, he stated that most of the bleeding was internal and only minimal external bleeding injuries were there. It was not possible to sustain such pattern of injuries in a fall from height.

19. Dr. Niranjana Baliarsingh (PW-22), Senior Scientific Officer (Chemistry), FSL, stated that on 29th August, 2017, he received one sealed wooden box containing the viscera of the deceased. On chemical, microscopic and TLC examination, metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates tranquilizers and pesticides could not be detected in exhibits "1A, 1B, 1C and 1D". The detailed report is Ex.PW-22/A. In his cross-examination he stated that no ganja was found in the stomach piece analyzed by him.

20. Kaushal Kumar (PW-23), Junior Forensic/ Chemical Examiner (Biology), FSL, Delhi stated that the Biological examination and DNA finger printing was done by him on the exhibits. The detailed report is Ex.P-23/A.

21. Shahrukh, Akram and Shamshad in their statements recorded under

Section 313 Cr.P.C., stated that their disclosure statement was forcibly recorded and their signatures were obtained on blank papers. They further stated that they had been arrested by the police officials from Factory No. N-110 instead of N-196.

22. From the opinion of Dr. Vijay Dhankar, it is proved beyond reasonable doubt that the deceased died a homicidal death pursuant to multiple injuries being inflicted. However, the issue before this Court is whether Shahrukh, Akram and Shamshad are the accused who inflicted injuries to the deceased. To prove this fact, the only evidence available with the prosecution is of Hori Lal and this Court is required to see whether conviction of the appellants can be sustained solely on the basis of statement of Hori Lal. Though in his examination-in-chief he stated that he along with his friend Naushad, the deceased, entered the factory for stealing iron however, in his cross-examination he admitted that Naushad scaled the wall of the factory and went inside however he did not go inside the factory and remained outside. He could not tell in which direction the gate of the factory was. In his cross-examination he also admitted that he fled towards the park on hearing the noise coming from the factory and that he was looking from some distance when he noticed them giving beatings to Naushad. It is thus apparent that Hori Lal did not see the factory workers who were awake or who chased Naushad and he only saw them beating from a distance at night and that too in the park. In his statement to the police Hori Lal stated that he came to know about the death of Naushad after 2-3 days however, in the Court he stated that he came to know about the death on the same day however he took no steps to inform the family members or get his statement recorded. In his cross-examination Hori Lal also stated that while the

accused persons had caught hold of Naushad he fled away and then came back hiding himself. He further stated that he saw that accused persons were hitting Nashad on legs and sides and thereafter he went away. Though Jaswinder Pal Kohli stated that the appellants were working in his factory on that date however, he neither deposed that at the relevant time they were present in the factory nor did the CCTV footage recording played in Court revealed their faces which would have proved the presence of the appellants and their running after the deceased Naushad beyond reasonable doubt. In view of this wavering stand of Hori Lal, this Court is of the considered opinion that conviction of the appellants cannot be based on the sole testimony of Hori Lal without there being any other material to connect them with the offence.

23. Considering the evidence on record, this Court is of the opinion that the prosecution had failed to prove the case beyond reasonable doubt against the appellants. Thus, the impugned judgment convicting the appellants and order on sentence are set aside.

24. Appeal is allowed. Appellants are directed to be released forthwith, if not required in any other case.

25. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

26. TCR be returned.

(MUKTA GUPTA)
JUDGE

APRIL 04, 2019

Vj/rk