

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRA-D-1002-DB-2004
Reserved on : 04.02.2020
Date of decision : 02.03.2020

Rohtash alias Kalu

... Appellant

Versus

State of Haryana

... Respondent

CORAM: *HON'BLE MR. JUSTICE RAJIV SHARMA*
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.P.S.Sekhhon, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Vivek Saini, DAG, Haryana.

RAJIV SHARMA, J.

This appeal has been instituted against the judgment dated 16.10.2004 and order dated 20.10.2004 rendered by the learned Additional Sessions Judge, Karnal, in Sessions case no.48/2003 whereby the appellant was charged with and tried for the offence punishable under Section 302 of the Indian Penal Code (in short 'IPC'). He was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months for the offence punishable under Section 302 IPC.

2. The case of the prosecution in a nutshell is that on 24.08.2003, a telephonic message was received in the police station Gharaunda that a person had fallen in the Haudi of the tubewell belonging to Rishi Pal resident of village Kohand near Shanni Temple. PW-12 ASI Shri Pal along

with other police employees reached at the spot. The dead body was lying outside the water tank (Haudi). Naresh son of Ishwar was present. He made statement Ex.P35 to the effect that on 24.08.2003 at about 08.15 P.M. he was present at his shop. Baljinder son of Narsa came to his shop. He told that a person aged about 50 years had fallen in the Haudi of tubewell of Rishipal son of Asgar. Inhabitants of the village had taken out his dead body. There were signs of number of injuries on his body. It appeared that he was Ram Niwas resident of Panipat who used to visit him. Naresh Kumar identified the dead body of Ram Niwas. He used to ply his tractor trolley on hire for transporting the goods from the factories at Kohand. ASI Shri Pal inspected the dead body and prepared the inquest report. He lifted the blood stained earth from the place of occurrence. The dead body was sent for post-mortem examination. On 27.08.2003 PW11 Mukesh Kumar, brother of the deceased made statement Ex.P37 before SI Baljinder Singh. His brother Ram Niwas was also owner of the tractor trolley. On 24.08.2003 he was present at his house. Baljit son of Narsa resident of village Kohand came to him at about 9.00 P.M. and told that the dead body of his brother Ram Niwas was lying at the tubewell of Rishi Pal and he had no suspicion about the death of his brother. Now he made enquiries at his level. PW-5 Anil Kumar son of Zile Singh told him that on 24.08.2003 Ram Niwas along with his tractor trolley was present in front of Singla Hotel, Barsat Road, Panipat, at about 5.45 P.M. One unknown person hired his tractor trolley for transporting the goods. That person with intention to snatch the tractor trolley or due to some other reasons, caused injuries to his brother with some sharp edged weapon. He also came to know that on 23.08.2003 in the

same manner one unknown person had hired tractor trolley of PW-13 Hawa Singh on the pretext of paying the hire and that unknown person brought Hawa Singh to the tubewell of Rishi Pal resident of Kohand and he attempted to commit same type of occurrence with him. . However, Hawa Singh escaped. Police again visited the spot. Site plan was prepared. Statements of other witnesses were recorded. On 28.08.2003, accused Rohtash was arrested from bus stand Babarpur. He was medico legally examined. On 29.08.2003 accused Rohtash was interrogated. He made disclosure statement that he had kept concealed a shirt and a knife by putting it in a polythene under the earth near the pavement of canal which is near Babarpur Mandi canal bridge. His disclosure statement was Ex.P39. Accused took the police party to the spot and got recovered his shirt and knife. These were taken into possession vide recovery memo Ex.P41. Site plan of recovery was prepared. The investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of the appellant was recorded under Section 313 Cr.P.C. He denied the case of the prosecution. The appellant was convicted and sentenced, as noticed hereinabove. Hence, this appeal.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

7. PW-1 Dr.Iqbal Singh conducted the post-mortem examination on the dead body of Ram Niwas. He noticed the following injuries on the person of deceased:-

- “1. An incised wound which was obliquely placed measuring 5 cm x 1 cm x bone deep was observed on the right side of fore head extending upto medial canthus of right eyes. The underlying wound was fractured and brain matter was seen coming was seen coming out. On further dissection, the under lying brain haemotoma was seen.*
- 2. V shaped incised wound with each limb measuring 4 cm x .5 cm and 3 cm x .5 cm was seen on left side of the frontal right region which was bone haemotoma.*
- 3. Incised wound of 5 cm x 1 cm x bone deep was present on left parietal area with underlying subcutaneous deep.*
- 4. Incised wound 1 cm x .5 cm x bone deep was seen adjoining above injury with underlying subcutaneous haemotoma.*
- 5. Incised wound measuring 3 cm x .5 cm x bone deep was seen 2 cm behind the above injury with underlying subcutaneous haemotoma.*
- 6. Incised wound 3 cm x .5 cm x bone deep was observed with underlying subcutaneous haemotoma.*
- 7. Incised wound 3 cm x .5 cm on the left side of chin which was bone deep and underlying haemotoma was present.*
- 8. Incised wound 4 cm x .2 cm x 8 cm spindle shaped was seen in the lateral and of left clavicle facing medically*

and laterally on probing.

- 9. Incised wound 3 cm x 1 cm spindle shaped seen just above the left axilla with corresponding out on Baniyan and Baniyan were seen.*
- 10. Incised wound 2 cm x 5 cm x 1 cm was seen on lateral side of left shoulder. Corresponding cuts on Kurta and Baniyan were seen.*
- 11. Incised wound 3 cm x 1 cm x 1 cm spindle shaped was present in the distal and of left forearm.*
- 12. Incised wound 5 cm x 2 cm x 1 cm spindle shaped was seen in posterior and medial of left forearm.*
- 13. Incised wound 4 cm x 2 cm spindle shaped and muscle deep was present on anterior side in middle of forearms.*
- 14. A lacerated wound 2 cm x 5 cm x 1 cm was seen on base of palmer aspect of left index finger.*
- 15. A lacerated wound 2 cm x .5 cm x 1 cm was seen obliquely placed on dorsal aspect of middle phalanx of left ring finger.*
- 16. Multiple abrasions of variable sizes were present on medial aspect of left knee.*
- 17. Multiple abrasion of various sizes were present on right leg.*
- 18. A lacerated wound of 4 cm x 1 cm was present on right scrotum.*
- 19. Abrasions with contusion measuring 82 cm x 7 cm on right side of chest and abdomen.”*

The cause of death was due to head injuries. All the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. He also deposed that on 04.09.2003 police moved an application Ex.P4 along with one sealed parcel containing knife to know his opinion, whether injuries no.1 to 13 could be caused with the knife. He broke the sealed parcel and knife was taken out. He opined that injuries mentioned in the post-mortem report could be caused by this weapon. He recorded his opinion Ex.P5.

8. PW-2 Dr. Neetin Kalra medico legally examined the accused. He noticed the following injuries on his person:-

- “1. There was a lacerated wound measuring about 3½ x 1½ x ½ cms. Present on the palmer aspect of right hand, 7 cm above the right wrist joint. Wound was found septic. Pus formation was present. Pain and tenderness was also found there.*
- 2. Abrasion 1 cm x 1 cm was present on dorsum and base of right middle finger. Pain and tenderness was present. Pus formation was present.*
- 3. Abrasion present with scab formation measuring about 1-1/2 x 1 cm front of right knee. Pain and tenderness was present.”*

The nature of injuries was simple. Duration of these injuries was within 4 to 6 days. Weapon used was blunt.

9. PW-4 Gautam Tomar had taken the photographs Ex.P9 to P20.

10. PW-5 Anil Kumar deposed that Ram Niwas deceased was his real cousin. On 24.08.2003 at about 5.00/5.15 P.M. He went near Singla

Hotel, Panipat to see his cousin Ram Niwas. He found him along with the tractor trolley. He was talking with him. Meanwhile one young person aged about 20/22 years came there. He told his cousin that he was to bring wheat from village Kohand on hire basis. On enquiry that person told his name Rohtash. Thereafter, both of them left for the village Kohand on the tractor trolley. He came back to his house. Thereafter, he went to his in-laws. On 26.08.2003 when he came back, he came to know that his cousin Ram Niwas was murdered. He knew that his cousin Ram Niwas was murdered by Rohtash. Police recorded his statement on 27.08.2003. He was confronted with statement Ex.D1.

11. PW-6 Braham Singh deposed that on 24.08.2003 he was going from Panipat to Gharaunda side on motor cycle. When he reached near Shaheed Gulab Singh, Petrol Pump, G.T. Road, near Kohand at about 7.00 P.M., one tractor trolley was found parked on the kacha portion of the G.T. Road facing towards Panipat. One young person aged about 20/22 years gave him signal to stop. Thereafter, he stopped his motor cycle. That person asked him to start his tractor with the help of handle. He expressed his inability to do so. His right hand was bleeding. He identified the accused in the Court. His statement was recorded by the police on 27.08.2003.

12. PW-7 Rohtash deposed that in the year 2003 he was running STD booth by the side of Shaheed Gulab Singh, Petrol Pump. On 24.08.2003 he along with his friend Parveen and Sushil came to the tubewell installed in the fields of Rishi Pal for cutting grass. It was about 6.00 P.M. Two persons met them. One of them was of 20/22 years age and the other person was of 50 years of age. They were coming towards the tubewell. They proceeded towards STD booth. They saw the boy of 20/22

years of age coming out of the water tank of the tubewell. He was bleeding from his left hand. The boy disclosed his name as Rohtash. They heard the shrieks from the water tank. When they tried to see in the water tank to know the reasons of shrieks, accused slipped away from the spot. Then they came to their village and informed Rishi Pal, owner of the tubewell. In his cross-examination, he deposed that they did not make any efforts to take him out of the water tank as they were frightened. They did not inform the police. Thereafter, he did not go towards water tank. His statement was recorded by the police at the petrol pump of Shaheed Gulab Singh on 27.08.2003 at 6.00 P.M.

13. PW-8 Sushil deposed that on 24.08.2003 he along with his friend Parveen and Rohtash went to the fields of Rishi Pal for cutting grass. Two persons, one of the age of 22 years and other of the age of 50 years were coming towards the tubewell of Rishi Pal. Rohtash levelled the earth for placing STD booth. Thereafter, they went to the tubewell of Rishi Pal. They noticed that a person of age of 22 years was coming out from the water tank of the tubewell. His right hand was bleeding. He disclosed his name Rohtash. He told that he had come to the tubewell to take bath. Then they started to proceed towards tubewell. Again said when they saw inside the water tank, they heard shrieks of some person. In the meantime accused Rohtash fled away from the spot. They went to the village to narrate the facts to Rishi Pal. In his cross-examination, he deposed that he did not make any effort to take out the person from the water tank. They went to village and informed Rishi Pal.

14. PW-9 ASI Prem Chand deposed that he was posted in Police Station Gharaunda on 27.08.2003. He joined investigation with SI/SHO

Baljinder Singh. SI Baljinder Singh recovered one pair of plastic chappal from the water tank of tubewell of Rishi Pal. On 04.09.2003 he took out one sealed parcel containing knife and went to GH Karnal. He presented an application Ex.P4 along with the sealed parcel of knife to seek opinion of the doctor as to whether injuries no.1 to 13 mentioned in the PMR could be caused with this weapon. The doctor gave his opinion Ex.P5. In his cross-examination, he deposed that some public man along with one constable went inside the water tank and took out the pair of chappal. They remained at the spot for about 1½ hours.

15. PW-11 Mukesh deposed that the deceased was his real brother. His brother was owner of a tractor. On 24.08.2003 at about 6.00/7.00 P.M. he was present in his house. Baljit son of Narsa came to his house at about 9.00 P.M. He told him that dead body of his brother Ram Niwas was lying at the tubewell of Rishi Pal. Again said he did not know the name of owner of that tubewell but the dead body was lying behind Shanni Mandir near the tubewell. He went to the tubewell. He identified the dead body of his brother. Anil had told him that one unknown person had hired his tractor trolley from Singla Hotel Panipat on 24.08.2003 at about 6.00 P.M. That person had taken his tractor trolley towards Kohand side. Hawa Singh also told him that one unknown person had also hired his tractor trolley one day prior to 24.08.2003. Hawa Singh told this fact to him on 26.08.2003. Braham Singh also told him that one unknown person requested him to start the tractor. In his cross-examination, he admitted that on 24.08.2003 he went to the spot at 9.30 P.M. The dead body of his brother at that time was lying outside the water tank of the tubewell. He admitted that he had got written in his statement regarding no foul play qua the murder of his brother

Ram Niwas on 24.08.2003 as he thought that he might have fallen himself in the water tank.

16. PW-12 ASI Siri Pal deposed that on 24.08.2003 he received a telephonic message informing that one person had fallen in the water tank belonging to Rishi Pal. He went to the place of occurrence. Many people of village Kohand were present there. The dead body was lying outside the water tank. Naresh was present there. His statement was recorded vide Ex.P35. He inspected the dead body. He prepared the inquest report. The dead body was identified to be of Ram Niwas by the brother of deceased namely Rajesh and Ram Lal. Post-mortem was got conducted. On 29.08.2003 SI Baljinder Singh interrogated accused Rohtash. He got recovered the knife along with the shirt. Accused also identified the place of occurrence. In his cross-examination, he admitted that tractor trolley was not taken into possession on that day. The place of recovery was 200 yards from the G.T. Road and visible from the G.T. Road. He did not call any person to join investigation at the time of effecting the recovery from the accused.

17. PW-13 Hawa Singh deposed that he used to park his tractor trolley near Gold Hotel, Gohana Road, Panipat. On 23.08.2003 at about 6.00 P.M. one young person of 22 years age came to him. He asked him that he was to bring wheat from village Kohand. On enquiry he told his name Rohtash. Thereafter, he came at the tubewell in front of Shaheed Gulab Singh, Petrol Pump on tractor trolley with the accused. Tractor trolley was parked near the tubewell. Thereafter, he pretended to search the key of the kotha tubewell. He asked him to search the key after removing the brick from the water tank of tubewell. He came to know about his bad intention.

When he bent down for search of key, he saw one knife concealed by him under his shirt. On seeing this, he came back. Thereafter he ran away towards G.T. Road. 5/7 persons met him. On seeing them, accused ran away from the spot. In his cross-examination, he admitted that he had not informed about the occurrence to the owner and other employees of that petrol pump. He did not inform the police about this incident.

18. PW-14 Inspector Baljinder Singh deposed that Mukesh Kumar got recorded his statement Ex.P34. The contents of same were read over to him. He went to the spot. One pair of Chappal was taken into possession. He also prepared site plan. Accused was arrested on 28.08.2003. He was got medically examined. On 29.08.2003 accused Rohtash was interrogated. Accused made disclosure statement. He got recovered shirt and knife. He prepared the site plan of place of recovery. Shirt is Ex.P43 and knife is Ex.P47. In his cross-examination, he admitted that no person from the nearby shops of police station Gharaunda was called at the time of interrogation of accused. He also admitted that hand pump was installed near the place of recovery and people generally drink the water from that hand pump. No person from that place was joined in the investigation. The place of recovery was at a distance of 200 yards from the G.T. Road. The place of recovery could be seen from the G.T. Road.

19. PW-15 Naresh Chand deposed that his shop was situated at bus stop Kohand Chowk. On 24.08.2003 at about 8.00/8.15 P.M. Baljit son of Narsa came to his shop. He told him that the dead body of Ram Niwas was lying at the tubewell of Rishi Pal. He went there and found the dead body of Ram Niwas. He identified the same. He did not raise suspicion regarding the death of Ram Niwas when the dead body was recovered. Police reached the

spot after 45 minutes. Accused made disclosure statement on the basis of which knife and shirt got recovered. In his cross-examination, he deposed that when he went to the place of occurrence on 24.08.2003, dead body of Ram Niwas was already taken out from the water tank. The villagers had taken out the dead body of Ram Niwas. He did not know their names.

20. The FSL report is Ex.P53. The blood was detected on exhibit-2 (blood stained earth), exhibit-4 (shirt) and exhibit-5 (knife). Exhibit-1a (Kurta), exhibit-1b(Pyjama), exhibit-1c (underwear) and exhibit-1d (Banian) were stained with blood.

21. The cause of death as per PW-1 Dr.Iqbal Singh was due to head injuries. All the injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. PW-1 Dr.Iqbal Singh noticed as many as 19 injuries on the dead body. PW-2 Dr.Neetin Kalra examined the accused.

22. The case of the prosecution is that the deceased was owner of tractor trolley. On 24.08.2003 his tractor trolley was hired by the accused. Accused took him towards the tubewell. The deceased was killed. Accused ran away from the spot.

23. The entire case is based on circumstantial evidence. In order to prove the case based on circumstantial evidence, the prosecution has to prove the case by completing the entire chain and all the circumstances must points towards the guilt of accused. It is in this backdrop, we have to examine the evidence produced by the prosecution.

24. PW-5 Anil Kumar deposed that he had seen the accused with the deceased on 24.08.2003. Ram Niwas deceased was his real cousin. He had last seen the deceased with the accused on 24.08.2003. The dead body

was recovered on 24.08.2003. However, he has not told this fact to the family of Ram Niwas. The only explanation given by him regarding not disclosing the family of the deceased was that as he had gone to in-laws and came back on 26.08.2003. The fact of the matter is that his statement was recorded on 27.08.2003. He had not disclosed in the statement Ex.D1 that he had gone to his in-laws.

25. PW-6 Braham Singh deposed that one person had asked him to start the tractor with the help of handle. He admitted in his cross-examination that G.T. Road was four lane. He was going on his left side of the road. There was no occasion for the accused to take help of a stranger to start the tractor. He is a mere chance witness.

26. PW-7 Rohtash deposed that he along with his friends Parveen and Sushil had gone to cut the grass. He asked his friend Parveen and Sushil to lift the soil near STD booth. Two persons met them. One of them was 20/22 years of age. Those persons came towards the tubewell. However, they proceeded towards STD booth. They saw the boy of 20/22 years of age coming out of the water tank of the tubewell. The boy disclosed his name Rohtash. He heard the shrieks from the water tank. But they came to the village and informed Rishi Pal. In the cross-examination, he admitted that police was not informed. They had not made any attempt to take out the person whose shrieks coming from the water tank. Similar statement is of PW-8 Sushil. He also deposed that they did not try to take out the body from the water tank though they heard the shrieks. He had only informed the owner of the tubewell. In case both PW-7 Rohtash and PW-8 Sushil heard the shrieks, they would have definitely raised the alarm and tried to take out the person from the water tank. Their behaviour of not informing the police

and not raising the alarm was unusual. Their presence on the spot is doubtful.

27. PW-11 Mukesh is brother of the deceased. According to him, Baljit informed him that dead body of his brother was lying at the tubewell of Rishi Pal. He went there to identify the dead body. He was told by Anil that one unknown person hired his tractor trolley from Singla Hotel Panipat on 24.08.2003 at about 6.00 P.M. Hawa Singh also told him that one unknown person also hired his tractor trolley one day prior to 24.08.2003. Braham Singh also told him that one unknown person requested him to start the tractor which was found present on G.T. Road in front of petrol pump. In case, Hawa Singh, Anil and Braham told him about the incident which happened on 23.08.2003 and 24.08.2003, it would have definitely arisen the suspicion. However, the FIR was lodged on 27.08.2003. Statement of Mukesh Kumar Ex.P34 was recorded on 27.08.2003. In his statement Ex.P34, he had not shown any suspicion about the death of his brother. Statement of PW-13 Hawa Singh is also not believable. He deposed that on 23.08.2003 at about 6.00 P.M. a boy of age of 22 years had come to hire his tractor trolley. He went to the same tubewell. He suspected when he saw knife concealed by that boy in his shirt. In his cross-examination, he deposed that he did not tell this incident neither to his employer nor to the police.

28. PW-12 ASI Siri Pal admitted that the place of recovery was 200 yards from the G.T. Road. It was visible from the G.T. Road. The Investigating Officer did not call any person to join the investigation. He also admitted that shirt was seemed to have blood stains but it was washed.

29. PW-14 Baljinder Singh also admitted that the place of recovery

could be seen from G.T. Road. It was at a distance of 200 yards from the G.T. Road. The place of recovery was at lower level vis-a-vis the G.T. Road. He also admitted that there was hand pump installed near the place of recovery and people generally drink water from the hand pump. The place of recovery was open and accessible to all. Though G.T. Road was busy road, no person was associated at the time of effecting the recovery. The recovery of knife and shirt is also doubtful. The recovery has been effected from the place near G.T. Road. No independent witness was associated. The Investigating Officer admitted that the place from where recovery was effected, was open and accessible to all. Lot of people used to drink water near the place of recovery but no independent witness was joined. Though PW-15 Naresh Chand deposed that the dead body was already taken out by the villagers but he did not know the names of the villagers. He also admitted that place of recovery was visible from the G.T. Road. It was accessible to all and open place. No person from nearby petrol pump was associated at the time of recovery. PW-15 Naresh Chand in his examination-in-chief deposed that on 24.08.2003 at about 8.00/8.15 P.M. Baljit son of Narsa came to his shop. He told that the dead body was lying at tubewell. He went there. He identified the dead body. He noticed injuries on the person. The face of tractor was towards Panipat. He had not suspected the murder of Ram Niwas. However, the fact of the matter is that PW-15 Naresh Chand in his statement Ex.P35 categorically deposed that he had no suspicion about the death of Ram Niwas.

30. There are gaps in the chain of evidence. In the case of circumstantial evidence, the motive play an important role. Though the prosecution has tried to prove that the accused wanted to take away the

tractor trolley of the deceased by relying upon the statement of Hawa Singh, however, his version that he was to be robbed by the accused cannot be believed. He had neither informed the owner or the police about the incident of 23.08.2003. The version of PW-6 Braham Singh cannot be relied for the simple reason that there was no occasion for the accused to seek his help more particularly when he was on the other side of the road. He also did not inform the brother of deceased Rohtash on 24.08.2003 but he informed him on 26.08.2003. The prosecution has failed to prove the case against the appellant beyond reasonable doubt.

31. Accordingly, the appeal is allowed. The judgment dated 16.10.2004 and order dated 20.10.2004 are set aside. The appellant is acquitted of the charges. He is on bail. His bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 02, 2020.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No