

**Usman Vs. State**

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**Court :** Delhi

**Decided On :** Dec-04-2014

**Judge :** Pradeep Nandrajog

**Appellant :** Usman

**Respondent :** State

**Judgement :**

§~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: December 04, 2014 + CRL.A. 1350/2014 USMAN Represented by: ..... Appellant Mr.Pramod Kumar Dubey, Advocate with Ms.Megha, Advocate versus STATE Represented by: ..... Respondent Ms.Aashaa Tiwari, APP for the State with Insp.Girish Kumar Singh, P.S.Okhla Industrial Area. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

(Oral) Crl.M.B.No.10623/2014 Since the appeal is being heard, instant application which seeks suspension of the sentence pending hearing of the appeal is dismissed. CRL.A. 1350/2014 1. With respect to the testimony of Fahimuddin PW-1, Jamaluddin PW- 2, the brothers of deceased Taufiq Alam @ Sonu and Mohan Singh PW-3, the owner of house RZ-336/21, Tuglakabad Extn. Delhi, in a room whereof dead body of Taufiq Alam was recovered in the morning of January 21, 2008, the learned Trial Judge has held that the prosecution has successfully established that appellant Usman was last seen in the company of the deceased

Taufiq Alam whose dead body was recovered from the room taken on rent by the appellant from Mohan Singh. Their testimony has been further relied upon with reference to the testimony of SI Ashok Giri by the learned Trial Judge to conclude that the prosecution has established the appellant absconding from his residence.

2. That Mohd.Taufiq Alam died a homicidal death in the room taken on rent by the appellant from Mohan Singh has not been questioned by the learned counsel for the appellant for the reason not only have the witnesses so proved, but when examined under Section 313 Cr.P.C. the appellant took the stand that he had been implicated only because of the fact that the dead body of Mohd.Taufiq as recovered from his room. (The answer to question No.29). Further, in response to question No.3, the appellant said that he had left the tenanted room to go to his village on January 18, 2008. Under question No.3, the incriminating circumstance put to the appellant was of being seen in the building where he was residing as a tenant on January 19, 2008.

3. Mohd.Taufiqs dead body was noticed in the morning of January 21, 2008 in the room taken on rent by the appellant from the landlord Mohan Singh when PW-1 and PW-2 peeped through the window inside the room because Vishnu PW-6, who resided in the opposite building, told them in the morning, when he met them as the two were searching for their brother, and informed them that last evening he had seen their brother in the company of the appellant.

4. Said information being conveyed to the local police station, Insp.B.S.Rana PW-19, taking along with him a copy of DD No.6A, Ex.PW19/A, reached the spot in question and found the room locked from the outside. He summoned Nanak Singh PW-9 who broke the lock with the help of a hammer. Taufiqs dead body was sent to the mortuary of All India Institute of Medical Science where Dr.Arvind Kumar PW-4 conducted post mortem on January 22, 2008 opining the that cause of death was asphyxia due to ligature strangulation. Horizontally placed and grooved ligature marks were noted on the neck. Multiple patecheal haemorrhage spots were detected in the sub scalp region. The thyroid complex though found intact was compressed.

5. At the trial Fahimuddin PW-1 has deposed that his younger brother Taufiq, a student of class IX, was residing with him and January 20, 2008 being Moharram, he give `1000/- (Rupees One Thousand only) asking him to bring household articles. His brother did not return. He and his brother searched all over for Taufiq. They saw the room of the appellant locked. At 7:00 AM the next day i.e. January 21, 2008, Vishnu told them that he had seen their brother with the appellant and therefore they peeped through the window inside the room where appellant was residing because the room was lying locked. He saw the dead body of his brother. Thereafter the police was informed. The lock of the room was broken. His statement Ex.PW-1/A was recorded.

6. We find that Fahimuddin has withstood the test of cross-examination. Learned counsel for the appellant concedes that there is nothing to discredit the testimony of Fahimuddin.

7. Jamaludin PW-2, the other brother of the deceased has corroborated the testimony of Fahimuddin with the only variation being that whereas Fahimuddin claimed that he gave `1000/- (Rupees One Thousand only) to Mohd.Taufiq, Jamaludin also claimed so. This variation is trivial. It hardly matters who gave `1000/-(Rupees One Thousand only) to the deceased. What matters is the testimony of the two being in sync that their brother went missing since January 20, 2008 and his dead body was detected by the two when they peeped through the window of the room in which the appellant resided. The room was locked from outside. The appellant had absconded.

8. Mohan Singh PW-3 has deposed that the appellant was residing as a tenant in one room at RZ-336/21, Tuglakabad Extn., Delhi where dead body of the deceased was recovered by the police in the morning of January 21, 2008.

9. Vishnu PW-6 has corroborated PW-1 and PW-2 of having seen the deceased in the company of the appellant on January 20, 2008 and he informing PW-1 the next day when he saw PW-1 searching for his brother that last evening he had seen the deceased in the company of the appellant.

10. The so called discrepancy in his testimony, is actually a typing mistake. The date 20.01.2008 has been wrongly typed as 19.01.2008, which fact came to the notice of the prosecution after the testimony of the witness was recorded. Application was filed under Section 311 Cr.P.C. The correction was made.

11. From the fact that room was locked and dead body of the deceased was recovered from the room taken on rent by the appellant, it is for the appellant to explain how the dead body reached his room. Unless he does so, the presumption would be that when the appellant left the room, after locking it from outside, the dead body was already inside. The fact that the appellant absconded is proved from the testimony of Insp.B.S.Rana which proved that the appellant was apprehended from his native village on February 22, 2008.

12. The trinity of circumstances : (i) the appellant being last seen in the company of the deceased on January 20, 2008, (ii) dead body of the deceased being recovered from the room taken on rent by the appellant which was locked from outside the next day morning on January 21, 2008, and (iii) the appellant absconding, are sufficient circumstantial evidence to nail the guilt of the appellant who has failed to render any satisfactory explanation of the incriminating circumstances and additionally has failed to make good the plea of alibi that he had left the tenanted accommodation to go to his village on January 18, 2008.

13. The appeal is dismissed. Conviction and sentence to undergo imprisonment for life imposed upon the appellant is affirmed.

14. Two copies of the decision would be sent to the Superintendent, Central Jail Tihar. One for his record and the other to be supplied to the appellant.

15. TCR be returned. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA)  
JUDGE DECEMBER04 2014 skb

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