

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. A. No. 250/2001**

% Date of Order : March 13, 2009

ABDUL WAHID @ CHACHU Appellant
Through : Mr. V.K. Raina, Adv.

VERSUS

TH STATE (NCT OF DELHI) Respondent
Through : Ms. Richa Kapoor, APP

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the appellant and the respondent.

2. Believing Noor Jahan PW-4, and with reference to the post-mortem report, Ex.-PW1/A, of Shakeel (husband of Noor Jahan) as also considering the MLC, Ex.PW3/B, of Noor Jahan, learned Trial Judge has convicted the appellant for the offence of murdering Shakeel. For the injury caused to Noor Jahan, the appellant has been convicted for the offence

punishable under Section 324 IPC.

3. Needless to state, for the offence of murder, the appellant has been sentenced to undergo imprisonment for life. For the offence punishable under Section 324 IPC, he has been sentenced to undergo imprisonment for a period of one year. Both sentences have been directed to run concurrently.

4. The time of the incident is 10.00 PM. Police received the information entered in the daily diary vide DD No.88B. SI Kamal Kishor PW-13, accompanied by Const.Sukhram Pal PW-10, went to GTB hospital and learnt that Shakeel was declared brought dead as recorded in the MLC, Ex.PW-3/A. His wife Noor Jahan was admitted in an injured condition as recorded in the MLC, Ex.PW3/B. Noor Jahan was fit for statement. SI Kamal Kishor recorded her statement, Ex.PW-4/A, in which she informed that she was residing with her husband at a Jhuggi in Shastri Park, Delhi. She informed that appellant Abdul Wahid whom she knew and was working in a factory had come to their jhuggi on 8.5.1998 in the drunken condition and her husband had made him to leave their Jhuggi. That the appellant nursed a grievance against her as he thought she was responsible for his being insulted. That today i.e. on 10.5.1998, she and her husband, along with their two children, were walking on the street at

10.00 PM. All of a sudden she was attacked in her back with a knife. She yelled. That the appellant was the assailant. He used the same knife to attack her husband. After attacking her husband, the appellant fled. With the help of people in the area she brought her husband to GTB hospital.

5. SI Kamal Kishor made an endorsement Ex.PW-7/A, on the statement, Ex.PW4/A. The endorsement was made at 1.20 AM on 11.5.1998 i.e. in the intervening night of 10 and 11 May, 1998. The FIR was registered at 1.30 AM.

6. We eschew reference to the investigation conducted at the spot in the form of blood control earth being lifted as also preparation of the site plan. We eschew reference to the arrest and recovery of the weapon of offence at the instance of the appellant for the reason learned counsel for the State and the appellant agree that the fate of the instant case has to be decided with reference to the testimony of Noor Jahan PW-4, and the medical evidence i.e. the post-mortem report of the deceased, and MLC of Noor Jahan as well as the MLC of the appellant.

7. But before discussing the same, we may note that as per the post-mortem report, Ex.PW1/A, of the deceased, he received as many as six injuries. In fact the deceased was stabbed five times, with injury No. 2 being an exit wound

pertaining to injury No. 1. The injuries were caused by a sharp edged weapon.

8. As per the post-mortem report, the deceased died as a result of haemorrhage caused by injury No. 3 which was opined to be sufficient to cause death in the ordinary course of nature.

9. Noor Jahan PW-4, deposed in Court on 21.4.1999. In examination-in-chief she reiterated the facts which were disclosed by her to the police and as recorded in her statement, Ex.PW-4/A. To put it pithily, she inculpated the appellant. In cross-examination suggestions were put to her that she wanted to get rid of her husband and that one Hasmat and Nawaab had quarreled with her husband. She denied that the appellant had called her when he saw said two persons attacking her husband. She denied that it was Hasmat and Nawaab who had attacked her husband. She denied that she received the injury while protecting her husband when he was being attacked by Hasmat and Nawaab.

10. Pertaining to the appellant, as per MLC, Ex.PW-3/A, he received an injury on his palm, which as per Dr.T.R. Ramteke PW-3, was opined to be a possible result of sustaining the injury while attacking another person.

11. In his statement under Section 313 Cr.P.C., the appellant took a line of defence pari-materia with the line adopted by him while cross-examining Noor Jahan. He stated:-

“On 10.5.98 at about 6 P.M. I was coming from the side of Theka Sharab, when I saw that Hasmat and Nawab were holding collar of Shakeel and were abusing him. I immediately came to the house of Noor Jahan @ Nanni and told her about the holding and abusing by the aforesaid persons upon which Noor Jahan accompanied me to the said place, where we saw that Hasmat and Nawab were giving knives blows on the person of Shakeel. On seeing it, I and Noor Jahan rushed to save Shakeel from Hasmat and Nawab, and in the process of saving Shakeel, I and Noor Jahan sustained knife injuries. After inflicting knife blows to Shakeel, Noor Jahan and myself, Hasmat and Nawab ran away from the spot. I and Noor Jahan removed Shakeel to the hospital where deceased Shakeel, Noor Jahan and myself were got medically examined. On the very next day of the incident, police had falsely implicated me in this case in connivance with Noor Jahan and Noor Jahan had given statement to the police that I had committed this offence. I came to know as Noor Jahan did not want to give my money back she has falsely implicated me in this serious offence and she had colluded with Hasmat and Nawab. I am innocent.”

12. It is thus apparent that the appellant admitted his presence at the spot when husband of Noor Jahan was fatally stabbed as also when Noor Jahan received a stab injury on her back.

13. The question which only arises for consideration is whether the version of the appellant in his statement under

Section 313 Cr.P.C. is worthy of acceptance.

14. It is important to note that Shakeel and Noor Jahan were attacked at around 10.00 PM. After reaching the hospital and recording the statement of Noor Jahan and making endorsement thereon, the rukka was despatched to the police station at 1.20 AM. Thus, within three hours and twenty minutes of the incident, not only the statement of Noor Jahan was recorded but even endorsement was made thereon and the statement and the endorsement despatched to the police station for registration of an FIR.

15. Noor Jahan's statement covers 4/5th of the page. The endorsement made by SI Kamal Kishor also spans the same length. It is apparent that approximately 40 minutes would be consumed in recording the statement and making the endorsement thereon. Given some time for the police to reach the hospital and wait for Noor Jahan to be given preliminary medical aid before recording her statement it becomes apparent that statement of Noor Jahan has been recorded with utmost despatch.

16. Where was the time for Noor Jahan to let off the real assailants and falsely implicate the appellant?

17. That apart, it is simply not believable that Noor Jahan would let go the real assailants and falsely implicate

the person who summoned her to rescue her husband.

18. Not only that. It is not in dispute that Noor Jahan was stabbed in the back. According to the appellant, Noor Jahan received the injury when she was protecting her husband who was being attacked with knives by Hasmat and Nawaab. If Noor Jahan received injury either at the hand of Hasmat or Nawaab, her grudge against them would still be burning as a fire in her mind by the time the police recorded her statement. Under no circumstances, it is believable that she would falsely implicate the appellant and let go Hasmat and Nawaab.

19. We note that Shakeel's post-mortem was conducted by Dr.K.K.Banerjee PW-1. We note that he deposed that the injuries were caused by a sharp edged weapon.

20. Dr.K.K.Banerjee was not cross-examined by the appellant inspite of opportunity granted.

21. No suggestion was given to Dr.K.K.Banerjee whether the injuries on Shakeel could be caused by one or two weapons.

22. According to the appellant, the deceased was attacked and injured by Hasmat and Nawaab who were having knives in their hands. Thus, to give credence to the

version of the appellant it became necessary to question the doctor who conducted the post-mortem and elicit his opinion whether the injuries were caused by a single weapon or two.

23. The appellant never gave any suggestions to Dr.K.K.Banerjee that the injuries on the person of the deceased could not have been caused by one weapon of offence and that two weapons of offence had been used.

24. It is apparent that the appellant did not do so for the reason he was aware that only one weapon of offence was used. The theory propounded by the appellant is nothing but a hogwash and has to be jettisoned.

25. We find no merits in the appeal. The appeal is dismissed.

26. The appellant is on bail. His bail bond and surety bond are cancelled.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

March 13, 2009
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